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11-12-48

Amrita Bazar Patrika

SUPREME COURT

THE BRITISH CABINET HAS been described as the pivot of the Constitution. The Supreme Court to be created in India may in the same manner be described as the pivot of the Indian Constitution. The Supreme Court will be the guardian, protector and enforcing authority of the Fundamental and other rights conferred by the Constitution. Dr. Ambedkar, therefore, rightly described Article (25) conferring the right to move the Supreme Court for the enforcement of Fundamental Rights as "the very heart and soul of the Constitution". But just as every flower has its thorns, the authority bestowed on the Supreme Court is subject to an important limitation. In an emergency of which the President of the Republic is to be the judge (advised, of course, by his Ministers) the Supreme Court's authority may be kept in abeyance. This relates to the "reservation" clause in the Article which was the target of attack. The fear was expressed that the reservation clause would give the State sweeping authority to neutralize the Fundamental Rights. Some of the Hon'ble members cited the actions of certain Provincial Governments who, they said, had arrested and kept people in detention without trial on the false plea of emergency. They expressed the fear that in the name of emergency the head of a Party Government would do likewise. Therefore they wanted the Supreme Court to function always.

Here was again the old question—when is individual liberty to be curtailed in the interest of social security? An even more important question is—who or what authority will decide at what particular moment considerations of individual liberty must give way to those of collective security? It cannot, however, be seriously maintained that there should be no provision in a Constitution for action to be taken in an emergency. What will constitute an emergency may be a debatable point. An Hon'ble member wanted to make the term 'emergency' more definite by substituting the words "rebellion" or "invasion". The Minister of Law pointed out that no Constitution in the world contained these words as a substitute for "emergency." Even if these words ('rebellion' and 'invasion') were accepted, the trouble would not end. Rebellion may take more than one form. A State could not wait for an actual outbreak of rebellion if it comes to know that preparations for it were going on. A citizen is not without his remedy if he is unjustly arrested or detained without trial on the plea that he was taking part in preparations for a rebellion. He will have the right to move the Supreme Court or any other court that may be empowered to exercise the powers of the Supreme Court. Is it contended that the President may issue a Proclamation suspending the operations of the Supreme Court prematurely? He cannot do it. Article 275(3) which provides for such a case runs thus

> A Proclamation of Emergency declaring that the security of India is threatened by war or by domestic violence may be made before the actual occurrence of war or of any such violence if the President is satisfied that there is *imminent* danger thereof. (Italic ours).

A Proclamation like that cannot therefore be issued simply on the ground that preparations for violence or invasion were going on. For such a situation the ordinary law gives ample powers to the Government. It is only when a rebellion or an invasion is "imminent" that the President may suspend the operations of the Supreme Court.

The reservation Clause which aroused a lot of suspicion reads: "The rights guaranteed by this Article shall not be suspended except as otherwise provided for by the Constitution". And what are the rights guaranteed? Article 25(1) reads: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". The Part referred to is Part III which deals with the "Fundamental Rights" and includes the "Seven Freedoms" and "Personal Liberty." If a citizen feels that on account of certain deficiencies in procedure or in other respects he has been unable to have his Fundamental Rights protected, it is always open to him to move the Supreme Court. And that Court will be competent to grant him not only remote but also immediate relief by a writ. Clause (2) of the Article runs thus: "The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, mandamus, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part." The Supreme Court therefore has been invested with powers so ample that it can rectify not only the errors of the administration and of the subordinate courts, but deficiencies, due to ambiguity or otherwise, of the provisions of the Constitution itself.

The question of accessibility to the Supreme Court was raised and discussed. It is true that owing to distance or any other reason it may not be possible for a citizen to apply to the Supreme Court. Clause (3) therefore provides that "Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2) of the Article".

No Constitution can be fool-proof or knave-proof. Nobody can guarantee that there will be no abuse of the power conferred on the President of the Republic in the matter of suspending the operations of the Supreme Court. The best antidote to or preventive of such abuse of power is enlightened and vigilant public opinion. There is a saying that a people get the Government they deserve. An autocratic or dishonest Government is not a freak of Nature. We must not suppose that by merely having a Constitution for India or a Supreme Court we have got everything. The fact is that the proper atmosphere for a democratic Constitution to function will have to be created. And the task is not only of the Government, but of the people and of their leaders as well.

THE FREE PRESS JOURNAL

BOMBAY, SATURDAY, DECEMBER 11, 1948

FUNDAMENTAL OF FUNDAMENTALS

There may be jubilation in the country, for "the heart and soul" of the Draft Constitution has been adopted by the Constituent Assembly.

Without this article, Dr. Ambedkar says, "the whole Constitution would become a nullity."

Article 25 of the Draft Constitution, which has now been adopted, lays down that every individual would have the right to move the Supreme Court or any other Court empowered by law, by appropriate proceedings for enforcement of the fundamental rights which are conferred under the Constitution. The President only could lawfully suspend the rights in times of emergency.

There is nothing new in the right now conferred, for an individual can, today, under the existing law move the courts to defend whatever liberties he has under the law.

The liberties of the people either of person or speech, association, movement and meeting, as described by the Draft Constitution amount to nothing more than the existing liberties under existing laws of Public Security, Sedition, Press Laws, Section 144 and many others.

The fundamental of fundamentals, therefore, perpetuates what exists today. What is the liberty of the person if he can be arrested, today, under the Public Security Act on alleged grounds, however formulated, if these grounds cannot be questioned in a Court of Law? What is the liberty of the person if under a writ of Habeas Corpus the Court is not permitted to go behind the reasons stated and examine the justification of the reasons?

This very question was asked in the Constituent Assembly when the Article dealing with the liberty of the person was under discussion. The question has not been answered.

When the fundamental rights are not rights but laws that a legislature may enact at any time at the behest of the party in power, the fundamental of fundamentals only guarantees the right of the individual to move the Supreme Court or any other Court empowered for the purpose to examine whether the procedure and the rules laid down by the law have been observed.

Even for this small guarantee the people must be grateful, for attempts have been made, of late, to deprive the Courts of their chartered right to enquire into the due observance of the procedure of law.

We may draw some comfort that no such attempt can be made under the Constitution. But of what avail are the liberties of the people if the procedure of law may be guaranteed but not the process of law?

The fundamental of fundamentals is only a fundamental to prevent an over-zealous administration.

We welcome the adoption of the Article, but we are not enthused, for what use is a Court of Law when there are no rights to question?

The National Standard

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BOMBAY: MONDAY, DECEMBER 13, 1948.

MODEL CONSTITUTION

THE Travancore Prime Minister's opposition to the model constitution which a committee of experts has been called upon to frame for States Unions and individual States, is inopportune and irrelevant. Mr. Narayana Pillai has no means of knowing the nature and scope of the proposed Constitution whose framers have not yet embarked upon their task. Nor is it incumbent on the part of every State to adopt the model. The Dewan's condemnation of the very proposal is, therefore, an unfortunate manifestation of irresponsibility.

It is necessary to understand the true implications of the task entrusted to the Government of India's Constitutional Adviser, Sir B. N. Rau, and his colleagues. The tempo of the unification and democratisation of the States, many of which but yesterday were notorious as the social wastelands of India, has been revolutionary. Having for centuries been apprenticed to the system of one-man rule, they have developed traditions unfavourable to the growth of democracy. The mere fact that the individual identity of these States has been merged into a group organisation cannot assist them in outliving their long-acquired habits.

All the newly formed Unions and many individual States, in whose administrations no popular element has so far been introduced, have been endeavouring to draw up their own constitutions. About the necessity of such constitutional instruments there is hardly any dispute, but the point at issue is whether the popular representatives in these Unions and individual States have the requisite experience and competency to undertake such a complex task. It is obvious that the men in authority in most of these units are amateurs and the fact that they have actively participated in hastening the birth of the present order cannot emancipate them from their limitations as administrators or constitution-makers. The low standard of efficiency in many Union Governments underlines the need for expert help and guidance from Delhi.

It is pertinent to recall the note of warning sounded by Dr. Ambedkar at the resumed sitting of the Constituent Assembly last month when commenting on the disparity in the constitutional relations between the Centre and the provinces and between the former and the States. The Law Minister warned that there would be grave anomalies in the Indian constitution unless the States agreed to transfer to the Union Government all the powers which the provinces had surrendered. He particularly invited them to save themselves the trouble of forming their own Constituent Assemblies.

The validity of this plea has been endorsed by many far-seeing statesmen. Sir T. Vijayaraghavachariar, whose knowledge of the States is intimate, has expressed the view that it is ridiculous that they "should have separate Consituent Assemblies of their own and that they should make laws defining State citizenship". This appeal by India's elder statesmen has not gone unheeded, and a progressive State like Mysore has wisely decided to await the proposed model constitution. Some of the States Unions have likewise postponed the deliberations of their constitution-making bodies. In the light of these developments, it was extraordinarily indiscreet on the part of the Travancore Dewan to condemn a proposal without pondering over its implications.

Moreover, it does not seem to be the intention of the States Ministry to impose the model constitution on any reluctant State or Union. States like Travancore and Mysore are enlightened enough not to need much spoon-feeding, but the evolution of others, particularly in the north, has not been so substantial. It is, we believe, primarily for such States that the model will be prepared. It is reported that the committee will, among others, consist of Sir B. N. Rau, Mr. K. M. Munshi and Mr. P. Govinda Menon, ex-Dewan of Cochin. There is no doubt that the States constitution will bear the imprint of their great experience and legal ability.

FUNDAMENTAL RIGHTS CONTROVERSY ENDS

DR. AMBEDKAR EXPLAINS LEGAL POSITION

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Monday—An important legal controversy over an Article of Fundamental Rights of the Draft Constitution was concluded today in the Constituent Assembly before it adjourned for a fortnight's recess.

In Article 15, voting on which was postponed a week ago, the words "except according to procedure established by law" following "no person shall be deprived of his life or personal freedom," were objected to by a large section of Congress members who proposed "due process of law" as a more suitable alternative.

When the acting President revived the subject this morning, only Dr Ambedkar made a speech, but he refused to take sides—unlike another member of the Drafting Committee, Mr Munshi, who had supported the second alternative during a previous debate—and the House then voted for the original provision.

Giving both sides of the picture, Dr Ambedkar explained that "due process of law" raised the question of the Legislature's relationship with the Judiciary. It sought to empower the Judiciary with authority to examine laws, not only from the point of view of the Legislature's competence, but also from the broader angle of the inherent "goodness" of a law.

He was not sure if a Legislature, with a strong party backing, could be considered free from bias in passing certain laws, nor was he certain whether a bench of judges were really competent in all circumstances to reject legislation passed by the people's representatives. He left final decision to the discretion of the House.

PRESIDENT'S ELECTION

On another interesting issue which the Assembly discussed today, the President of the Drafting Committee was more certain of his stand. This was an amendment by Prof K. T. Shah suggesting that instead of the procedure laid down in Article 43, the election of the Union President should be on the basis of adult franchise.

There was strong opposition to the amendment and the House adopted the original clauses, with a modification, which provided an electoral college consisting of elected members of both Houses of Parliament and the elected members of the Legislatures of the States. Other amendments similar to Prof Shah's were also defeated.

Three reasons were mentiond by Dr Ambedkar for opposing adult franchise as a basis for electing the Union President. In the first place, India's large adult population—nearly 138m—was a great obstacle; secondly, the necessary administrative machinery would be difficult to find; thirdly, the powers of the President were not so great as to make his election on adult franchise an imperative necessity.

(An Agency report is on back page)

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Hindustan Times
15.12.48.

Leader 16.12.48.

Election of President

AN interesting discussion appears to have taken place in the Constituent Assembly in regard to the manner in which the Indian President should be elected. The Drafting Committee's proposal was that he should be elected by an electoral college, consisting of the elected members of both Houses of Parliament and elected members of the legislature of the provinces and states. Prof. K. T. Shah wanted that the President should be elected directly by all the adult citizens of India, voting by secret ballot. The change in the system of election advocated by Prof. Shah was inconsistent with the notions underlying parliamentary democracy. It is well known, however, that the professor is not a believer in the parliamentary type of executive for this country. The view to which he gave expression earlier in the Constituent Assembly was that India should have a presidential executive on the lines obtaining in the United States.

Experience has demonstrated that the presidential executive is most difficult to work. Often it has led to frequent conflicts between the executive and the legislature and, far from supplying leadership to a country, it has made for weak government. Who can deny that had President Wilson had a legislature, on whose support he could rely as the British Prime Minister can, the history of the period immediately preceding the second world war would have been vastly different? Had the United States joined the League of Nations and given to France the guarantee of security, which she wanted, it is conceivable that the League would have functioned, in the years preceding the war, in a more satisfactory manner than it actually did.

The American constitution is based upon a system of checks and balances. It was influenced by the Montesquieu school of thought, which had not correctly appreciated the nature of the British constitution. India is familiar with the British type of executive and both in the dominions and many European countries it is this type which has found favour. A directly elected President might have proved a competitor with the Prime Minister for effective power and thus provided for possibilities of friction, which could be avoided. The Constituent Assembly was, therefore, wise in supporting indirect election. Even in the case of the United States the system of election provided for the president is not, theoretically speaking, completely direct. Prof. Shah thus wanted to go further than even the framers of the United States constitution were prepared to.

The arguments against direct election were set forth by Dr. Ambedkar in an able speech and are irrefutable. It is impossible from a purely administrative point of view to devise a system based on an electorate, which will have about a hundred million people. The system actually devised wil give, in the selection of the President, an effective voice to both the central and provincial legislatures. It will thus make him completely representative of the nation. A simpler plan which appeals to us would have been to eliminate the provincial legislature altogether and provide for the election of the President by the federal legislature alone. In any case, Prof. Shah's amendment was an impossible one and the Constituent Assembly was right and wise in rejecting it.

THE PRESIDENT

The election of the President of India as prescribed by the Constituent Assembly is patently democratic. Article 43 in the draft constitution declared that "the President shall be elected by an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States." One vital amendment adopted by the Constituent Assembly related to the first clause, and in deciding that even in the case of Parliament only elected members could participate in the election of the President, the House was adding to the democratic content of the election. It stands to reason that if the nominated members of the Legislatures of the States are precluded from participation in the election, the nominated members of Parliament should also be ruled out. In clause (b) the term legislature is to be taken to mean the lower house of legislature where the legislature is bicameral. These modifications apart, there was the amendment by Mr K. T. Shah who wanted that the President should be elected by adult citizens of India voting by secret ballot. It was rightly rejected by the Constituent Assembly. As Dr Ambedkar pointed out, the adult population, estimated at about 188 millions, presented in itself a serious obstacle, added to which was the difficulty of finding the necessary administrative machinery to hold such an election. Nor did the limited powers of the President call for any direct election. Once the Constituent Assembly had gone in for the parliamentary type of government, we fail to see what particular purpose is served by the plea for direct election of the President. Inasmuch as the members of the electoral college are all popularly elected, there can be no denying that their choice of a President will carry with it the seal of popular backing.

It is true that the President of the United States is chosen by a body of electors who are in turn chosen by the people. No senator or representative or person holding an office of trust or profit under the United States can become an elector. As the system works, as soon as the electors are chosen, it is generally clear who is to be the President. The appeal to the entire population is justified by the fact that the President of the United States is the real executive head of the administration. But what is justified under the presidential form of government appears a needless procedure under the parliamentary system of government we have adopted, wherein the President remains only the head of the State and the real executive head is the Prime Minister. Mr Shah knows all this and his plea for direct election had not even any great academic merit about it. Indirect election, as decided upon by the Constituent Assembly, guarantees that the President is a democratic choice, and in so far as it ensures that in the practical working of democracy time and energy and money are not needlessly expended, the decision will be widely welcomed.

Statesman 21-7-12

INDIA'S PRESIDENT

Just as the USA is reported to be thinking of abolishing her Electoral College for presidential elections, India has decided to set one up. The history of the former body is interesting and relevant. The U.S. Founding Fathers, who, with the exception of Jefferson, regarded democracy with considerable reservations, intended that the people should vote, not for the President direct, but for worthy citizens of independent mind; these would then select a President of their own judgment, without reference to the popular will. Things did not work out that way. The first President, Washington, was an overwhelming choice, popular and electoral; but on his retirement the party system was already existent. Till Jackson's time candidates were selected by Congressional caucuses, afterwards by Party Nominating Conventions; but in neither case did the Electors venture to exercise their alleged freedom of choice. Today "election" by the College is a mere—and to some irritating—formality; legislation to amend or abolish it is forecast for next year.

Indian conditions are no doubt in material respects different. The potential electorate is more than double that of the USA; whether, nevertheless, the difficulty alleged by Dr Ambedkar in handling an electorate of this size is substantially greater than that obtaining, by universal suffrage, the House of the People in the Union Parliament is more questionable. The Law Minister was on stronger ground in pointing out that the Indian President, unlike the U.S., is not also the Prime Minister; his status in fact corresponds more to that of the President of the Republic in France, and the precise method of election—despite his fairly wide powers in emergency—is therefore of less vital public concern. On the other hand India's President, barring death, resignation or impeachment, will hold office for five years, while the House of the People and State Legislatures may be dissolved after varying periods; that could produce anomalies and conflicts similar to those caused by mid-term Congressional elections in the USA. Moreover, in order to achieve "uniformity in the scale of representation" of the States, their representatives' presidential votes will be weighted in a rather complicated way.

Nevertheless the method of indirect election now adopted by the Constituent Assembly may be thought to have advantages outweighing its defects, provided that the status and importance of India's President does not alter in the course of time. That he will always be above party, as apparently widely envisaged, U.S., French and German experience alike render doubtful. Extension of his sphere of activity, given stability, may seem improbable, though it may be remembered that men like Madison never dreamt of the powers exercised by U.S. Presidents today. Large countries have their special problems. Only time can show how they will be handled.

Statesman
28-10

OATH OF OFFICE FOR PRESIDENT AMENDED

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Monday—Congress members of the Constituent Assembly today succeeded in including in the Draft Constitution a reference to God, the first to be accepted so far by the House.

During the discussion on Article 49, which prescribes the Oath of Office for the President of the Indian Union, Mr H. V. Kamath suggested, by means of an amendment, the addition of the words "in the name of God", which was agreed to in a modified form to provide an alternative "affirmation" for conscientious objectors.

Preceding the vote, which was unanimous, there were some interesting speeches both for and against the proposition, opposition being confined to two Muslim members on the ground that the secular character of the State would be affected by the proposal. Neither Mr Munshi, who spoke later, nor Dr Ambedkar, who wound up the debate, thought that the objection was valid because a secular State did not mean a Godless State.

In moving his amendment, Mr Kamath spoke firmly against the tendency to "escape from God" and quoted Francis Thompson's "Hound of Heaven" and one of Mahatma Gandhi's prayer songs in support of his argument. An equally passionate plea for the proposal was made by the Rev Fr Jerome D'Souza, who emphasized that the modified amendment would not unequivocally commit the President to belief in God or to a particular concept of God.

Supporting the change, Mr Munshi agreed that there was a marked emphasis in the Draft Constitution on the exclusion of God. There was no shame in admitting that India was a religious country; on the other hand, he thought that if India had anything to give to the world, it was an attitude to life which was imbued with spirituality.

Explaining the Drafting Committee's reasons for excluding reference to God, Dr Ambedkar said that the intention was to avoid embarrassment over the varying concepts of God among different communities. He had no objection to the proposed change, particularly because for some people God was a moral sanction, which would improve the force of the President's Oath of Office.

Earlier, the House passed Articles 47 and 48 which define conditions of eligibility for the Presidential election and refer to the President's emoluments and allowances. Several amendments to the Articles were moved by Prof K. T. Shah, including one urging the payment of a pension to each President. Prof Shah also sought, by amending the Oath of Office, to prevent nepotism and personal aggrandizement. All his proposals were rejected.

(An agency report on page 4)

Hindustan Times 28-12-48

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C.A. ADOPTS ARTICLES RELATING TO PRESIDENT'S OFFICE

(By Our Special Correspondent)

NEW DELHI, Monday.—Reassembling after a two-week recess the Constituent Assembly today quickly settled down to business and disposed of three articles relating to the qualifications and conditions of office of the President of India and the oath he should take on entering office.

The most heated debate took place on the amendment suggesting that the President, if he so desired, should take the oath "in the name of God."

Forgetting that an alternative was provided for those who did not want to swear by God, several members objected to the proposal. God should be left at home, was their argument. There should be no room for Him in the constitution of a secular State.

Mr Karimuddin, Mr Tajammul Hussain and Mr R. K. Sidhwa were the three protestants, but against them was an impressive array of speakers, including Mr K. M. Munshi, the Rev. D'Souza, Mr Thirumal Rao, Mr Kamath and Mr Tyagi. With the Almighty Himself as their theme, each one of them tried to outstrip the other in stressing the importance of including His name in the Constitution. In India in particular they must not turn their face against the Supreme Being, for spirituality was the main feature of the country's culture and civilization.

Detailed report on page 4

Reference To God Needed

It was Mr Munshi who put the whole problem in its perspective.

Continued on back page col. 5

C.A. DEBATE

Continued from page 1 col. 5

The proposal would in no way affe the secular character of the Sta which only implied equality betwe all citizens irrespective of their r ligion. The sub-conscious mind India was religious as was prove for instance, during the ceremoni after Gandhiji's death. Any Sta he warned, which outlawed Go would soon come to an end.

Dr Ambedkar's reply was assuring to those who might fearing that the introduction of t word "God" would mean any char in the secular nature of the Sta The President, he said, would ha two types of obligations. Some these would be covered by le punishment, but for others, whi were moral duties, they must ha some sanction. To some, God w this sanction, while others did want Him as the sentinel watchi over them. They, like Bradlaugh the House of Commons in the 1 century, could depend on their c science alone.

Explaining why the Drafting Co mittee themselves had not incluc the mention of God, he said t different religions had different cc ceptions and they found it difficu to decide on the form in which t name should appear.

President's Qualifications

The debate on qualifications f Presidentship centred on thr amendments moved by Prof. K. Shah, which, however, met with r better fate than many of his oth suggestions. He wanted that ar Minister offering himself for Pres dentship should resign and th every candidate should divest himse of any business aided by the Goverr ment, which should buy it from hin His third suggestion was that thos convicted of treason or offence against the State or the constitutio should be disqualified.

Prof. Shah received limited suppor from Mr Kamath, Mr Shyamnanda Sahai and Mr Tajammul Hussai but found a strong opponent in M Algurai Shastri. It was, however, th sledge-hammer blows of Dr Ambec kar's logic which shattered his whol case.

Ambedkar's Reply

Using heavy sarcasm, Dr Ambedka drew a picture of "complete adminis trative chaos" if Ministers had t resign before offering themselves fc Presidentship. What would happe during the period between dissolutic of one Parliament and election another? Would the State be left the hands of bureaucrats or woul they have to look for temporary Min isters? Was not the whole idea ab surd? If, however, the purpose wa to eliminate the possibility of Minis ters influencing elections, the propos ed election commissions would loo after this problem as they would hav complete control.

The second suggestion was abo disqualification of those convicted treason and other offence. Other Art cles in the Constitution, Dr Ambec kar argued, had taken care of th aspect and Parliament would have fu powers to add the suggested disqual fications to those already mentione

Referring to the proposal that th President should divest himself business interests, Dr Ambedkar sa that it was an entirely novel provisic not found in any constitution. Ev in the U.S.A. where the Preside with his extensive executive powe had all the opportunities of persor aggrandizement, they had not thoug it fit to lay down similar rules. T Indian President would be only nominal figurehead and the provis therefore, was absolutely unnecessa

The proposal, moreover, was drastic that no one, not even Pr Shah himself, would care to c himself for Presidentship.

This personal reference, as was be expected, brought the Profes to his feet and he made an open dec laration that the provision would never deter him.

"I am glad of the assurance," continued Dr Ambedkar, "but we cannot face the possibility of having Prof. Shah as the only candidate. Safety lies in the multiplicity of candidates."

It was a good-humoured retort and Dr Ambedkar was happy to join in the laughter.

Though thwarted, Prof. Shah was not defeated and in the article on conditions of the President's office he sought to include a provision for pension. Dr Ambedkar was sympathetic with the idea, but asked the House to leave the matter to the discretion of Parliament.

The Hindustan Times

WEDNESDAY, DEC. 29, 1948.

IN THE NAME OF GOD

It was a stimulating debate that the Constituent Assembly held on the day it reassembled, after a short recess, on the article laying down the qualifications and conditions of office of the President of the Republic and the terms in which he should take the oath of his high office. The Drafting Committee had done its job competently and there was little scope for any radical alteration in the article so that the various detailed proposals moved by Prof. K. T. Shah were rightly rejected. The Constituent Assembly none the less made up for a lacuna deliberately left by the Drafting Committee.

The terms of the oath merely provided for solemn affirmation and did not include the alternative that it could be taken by the President, if he so chose, in the name of God. Dr Ambedkar explained that the Drafting Committee had left it to the House to determine the matter since the word 'God' had different significance in different religions. While we are glad that the Committee's indecision had the effect of providing an interesting topic for debate and thus focussing public attention on it, we do not think the Committee had strong justification for evading the issue. "God" has identical significance in all religions and Dr Ambedkar, if he has been correctly reported, propounded a narrow view of Hinduism when he said that with Hindus "God" is merely a concept and not a force which guides the world. On the contrary, the Hindu conception of God's universality as an all-pervading force is such that it is shown to possess as numberless forms as matter itself. The Hindu would, indeed, consider it ungodly to include even the alternative of solemn affirmation in the constitution. However, the alternative is in consonance with the idea of a secular State. As pointed out by Mr K. M. Munshi, a secular State does not mean a Godless or irreligious State. It merely means a State in which all are equal, irrespective of the religion they profess. This concept has been widened by making provision even for those who may not believe in any religion or in God. Indeed, the alternative makes for a secular State *par excellence*, without doing injury to the moral and spiritual concepts of India's hoary civilization and culture. We are surprised that Mr Tajammul Hussain who revealed his catholicity by remarking that religion and God are the private concern of an individual showed intolerance by remarking that difficulties might arise when the word "God" is translated into Indian languages and that if the word "Bhagwan" were used non-Hindus might find it difficult to accept it. Apparently, he had no difficulty in accepting the English word 'God.' Why should he then not accept the word "Bhagwan" if it is the appropriate word in the particular language in which God is described? Ishwar and Allah, as in Gandhiji's *Ram Dhun*, are equally acceptable as God's names.

The various amendments moved and the speeches made betrayed misunderstanding of the role and functions of the President. While the President will enjoy all the dignity and honour due to him as the Head of the State constitutionally he will have only very limited powers. He will thus not be in a position to exploit his office for personal or group advantage. There was no need, therefore, for the kind of safeguards Prof. Shah proposed. Equally untenable was the plea of the critics that Governors or Ministers should resign their office before standing for election as President. Ordinarily, these two categories of public men provide the most promising field for selection of the head of the State and they should not be debarred from offering themselves for election by having to weigh the chances of their election as against the advantage of sticking to their own office. We congratulate the Constituent Assembly on adopting the amendment of Mr Kamath as modified by Mr Mahavir Tyagi and thus raising the constitution to the spiritual height befitting a people universally God-fearing.

statesman · 29-12-48.

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METHOD FOR PRESIDENT'S IMPEACHMENT

ASSEMBLY ADOPTS ARTICLE

The Constituent Assembly on Tuesday adopted the Article laying down the procedure for the impeachment of the President. A large number of amendments were moved to the Article.

Mr Karimuddin and Prof K. T. Shah moved amendments specifically to include "treason, bribery and corruption amongst the charges which could be framed against the President. Dr Ambedkar pointed out that these would be covered by the much wider term used in the Article, namely, "for violation of constitution." The amendments were rejected.

A number of amendments were moved suggesting that before the President was impeached, sufficient notice, ranging from 14 to 15 days, should be given. Dr Ambedkar accepted Mr Gupta's amendment which suggested 14 days' notice.

Dr Ambedkar also accepted an amendment moved by Mr Shankerrao Deo that a notice of impeachment shall be made in the form of a resolution sponsored by one-fourth of the total number of members of either House of Parliament. The original Article said that 30 members would be sufficient for the purpose.

Mr Karimuddin moved another amendment which said that during impeachment, the proceedings of Parliament should be conducted by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence should be final. The Speaker of the House of the People or the Vice-President who would preside over the Council of State, would not do to preside over such an occasion. The amendment was rejected

(Continued on page 7 column 4)

DEBATE ON DRAFT CONSTITUTION

(Continued from page 1 column 3)

after Dr Ambedkar pointed out that such a procedure could be laid down in the Rules of Procedure of Impeachement, which both Houses of Parliament would have to frame.

AMENDMENTS REJECTED

Prof Shah moved a number of amendments suggesting, firstly, that the initiation of impeachment proceedings should be the sole privilege of the Lower House and, secondly, that after the Upper House sustained the charge against the President, the Lower House should have a chance to approve the resolution before the President was removed from office. The amendments were rejected.

Mr Mohammed Tahir moved an amendment suggesting that instead of a two-thirds majority a simple majority would do for the impeachment proceedings to become effective. This was rejected.

Mr Naziruddin Ahmed, by an amendment, suggested that instead of the impeachment resolution becoming effective and removing the President from office "from the date" on which the resolution was passed, it should become effective "from the time" the resolution was adopted.

He pointed out that a certain amount of confusion would be created if the words "from the date" were retained. Supposing either House of Parliament passed a resolution removing the President from office in the afternoon, that very morning the President might have given assent to Bills or proclaimed an emergency. If he was to be removed from office "from that date" he wanted to know whether these acts would have been done by the President in the exercise of his duties. The amendment was rejected.

Mr Karimuddin moved inclusion of a new clause stating that a President who was impeached and removed from office should be disqualified from holding any office of honour, trust or profit. This was rejected.—API.

JURISDICTION TO IMPEACH

Prof Shah had urged, Dr Ambedkar said, that the Upper House should not have anything to do with the impeachment of the President, and that jurisdiction to impeach the President, investigate charges against him and come to conclusions must solely vest in the House of the People.

He could not understand the argument. After all, an impeachment affected the dignity, honour and rectitude of the office of the President—all matters in which the Upper House was equally concerned along with the Lower House.

Mr Mohammad Tahir had suggested that a simple majority would do but, said Dr Ambedkar, he would urge that a motion for impeachment was quite different from a vote of no confidence. A motion of no confidence did not involve any shame or moral turpitude, but a motion for impeachment stood on a totally different footing and would practically ruin, if it succeeded, the whole public career of the person concerned.

Such a matter of great consequence should not, Dr Ambedkar thought, follow from the decision of a bare majority. It was because of this that the Drafting Committee had provided that the verdict of "guilty" should be supported by a two-thirds majority.

Referring to the suggestion that the Chief Justice of India should be asked to preside over impeachment proceedings, Dr Ambedkar said he was in principle in agreement with this suggestion. But he pointed out that it was a matter of detail which could well be provided for in the rules of procedure for impeachment, which both Houses of Parliament would have to frame.

OFFICES OF TRUST

Regarding the suggestion that a President removed from office after impeachment should not be entitled to offices of trust or honour in the Union, he said it was extremely doubtful whether such a person would seek any high office of profit.

Even if he did so, it was more doubtful if he would succeed. If a specific provision was necessary to guard against this, future Parliaments could do so by a provision in the Civil Servants Act. But he thought it would be a shameful imputation on the people of the country if they thought that it was necessary to make an express provision in the Constitution to prevent the people from electing criminals or those who had committed a breach of trust in any high office.

The House passed the article in the following form:

"When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament. No such charge shall be preferred unless (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice in writing, signed by not less than one-fourth of the total number of members of the House, has been given of their intention to move the resolution, and (b) such resolution has been passed by a majority not less than two-thirds of the total membership of the House.

"When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated, and the President shall have the right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by a majority not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed."

FILLING OF A VACANCY

The House then took up the article relating to election for filling a vacancy in the office of President. The article provides that an election to fill a vacancy caused by the expiration of the term, of office of the President should be completed before the expiration of the term, that the election should be held as soon as possible within six months from the date of the occurrence of the vacancy and

President for the remaining term of office in which the vacancy has occurred, and that there should be no election.

Prof K. T. Shah moving for the addition of a new clause seeking to provide for an interim arrangement till a new President was elected, said that the Vice-President should hold the office of President.

Dr Ambedkar did not accept either of the amendments, and the House also rejected them and adopted the article.

The House also passed an article providing for a Vice-President of India. The Vice-President would be ex-officio Chairman of the Council of State, and would not hold any other office of profit. He would not function as Chairman of the Council of State when acting as President.

Article 54 provides for the Vice-President to act as President, or to discharge his functions during casual vacancies in the office or in the absence of the President. This was also adopted after a brief discussion. Mr Thakurdas Bhargava pointed out that there was no mention about the obligations and liabilities of the Vice-President during the period he acted as President, though it was provided that he would have all the powers and immunities of the President.

Mr Kamath wanted to know if the Vice-President would get the same emoluments and allowances as the President when he deputized

SAME EMOLUMENTS

Dr Ambedkar said that the Vice-President would get the same emoluments and allowances as the President, if not provided otherwise by Parliament. He thought it necessary to leave the power to Parliament to fixe allowances and salary for a person assuming power for a short period.

Referring to Mr Bhargava's suggestion, Dr Ambedkar said that evidently Mr Bhargava meant that there was no provision for the impeachment of a Vice-President when acting as President. Obviously, when the Vice-President became President, the duties and obligations which had been imposed on the President fell on him and during his tenure of office, he could not claim immunity against offences or acts which exposed the President to the liability of being impeached.

The House adopted the article.

The next article to be taken into consideration related to the mode of election of Vice-President, and provided, among other things, that he be elected by the members of both Houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote.

Discussion on the article had not concluded when the House adjourned. —API.

BUDGET SESSION OF PARLIAMENT

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The Budget session of the Indian Parliament will, it is understood, begin on February 1 and continue until the first week of April.

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(Continued on page 7 column 4)

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The House then took up the article relating to election for filling a vacancy in the office of President. The article provides that an election to fill a vacancy caused by the expiration of the term, of office of the President should be completed before the expiration of the term, that the election should be held as soon as possible within six months from the date of the occurrence of the vacancy and that the person elected to fill the vacancy should be entitled to hold office for the full term of five years.

Mr Mohamed Tahir moved an amendment seeking to provide for holding of the election to fill a vacancy within three months of its occurrence. He also wanted the person elected to fill the vacancy to be entitled to hold office for the remainder of the term of five years. Alternatively, he suggested that the Vice-President act as the office of President.

Dr Ambedkar did not accept either of the amendments, and the House also rejected them and adopted the article.

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The House adopted the article.

The next article to be taken into consideration related to the mode of election of Vice-President, and provided, among other things, that he be elected by the members of both Houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote.

Discussion on the article had not concluded when the House adjourned. —API.

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Indian News Chronicle
30-12-48

R.S.S. Must Be Fought On Ideological Plane

—GOVIND SAHAI

(By Our Staff Correspondent)

DELHI, Wednesday.—"The fight against the R.S.S. is an ideological one and has to be fought not with the help of the police but with ideas", said Shri Govind Sahai, Parliamentary Secretary, U. P. Government, addressing a Press conference this morning. R.S.S. volunteers should be given better treatment in jails, he pleaded.

Mr. Sahai said, "We should not be vindictive towards the Sanghites." "In the U.P. jails," Mr. Sahai pointed out, "R.S.S. prisoners are being given all possible facilities. They are allowed to read any number of newspapers and wear their own clothes."

Mr. Sahai revealed that according to his information nearly 20,000 volunteers had offered "Satyagraha," but the movement had failed to arouse public interest in its favour. According to his calculations hardly .3 per cent of the total population of the country was favourably disposed towards the movement.

Quoting some "impeachable sources", he claimed to have information to the effect that the R.S.S. leadership itself had realised that there was demoralisation and disillusionment in R.S.S. ranks. This, he said, was due to two reasons. Firstly, the people of the country were against any movement which aimed at disturbing the peace. Secondly, the stock of the Congress, which, he admitted, was now going down, was still sufficiently high in the country.

Tracing the development of the R.S.S. organisation, Shri Govind Sahai said that the Sangh was a centre which attracted different interests in different ways. For the innocent children the Sangh was simply a much cherished Vyayam Shala; for college boys it was an officers' training college and a laboratory for character-building experiments; for the educated and simple minded Hindus, it was a romantic movement which was making a bid for the revival of ancient Hindu culture and glory; for the frustrated patriots and communal chauvinists the Sangh was the only hope for the re-union of the country; for the discontented and aggrieved Hindu middle-class, the Sangh was a springboard which would land it into the promised land.

The intelligent amongst the disillusioned became Communists and those who possessed little or no intelligence joined the R.S.S. The membership of the R.S.S., according to him, had reached between 45 to 50 lakhs.

TWO BLUNDERS

The Sangh, however, said Mr. Shahai, committed two tactical blunders, the first being the creation of an atmosphere in which Gandhiji was assassinated. The second blunder committed by them was the launching of this movement at an inopportune time. Mr. Sahai declared that the act of Gandhiji's murder was the logical result of a system of thought and an attitude of mind which the gospel of communal hatred and continuous preaching of violence and retaliation had created in the country. These germs were gradually getting into the Congress organisation before the Satyagraha was actually launched as the Sanghites were successfully playing one Congressman against the other. There were sharp differences even among the members of the Constituent Assembly with regard to the ideals of the R.S.S.

Concluding, Mr. Sahai said that to put an end to the growth of such an organisation in the country, secular democracy in the country should be strengthened rapidly.

Mr. Sahai during his two-day stay in Delhi addressed about a dozen meetings on the R.S.S.

State mon. 30-12-48

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MANNER OF ELECTION OF VICE-PRESIDENT

ASSEMBLY PASSES FIVE ARTICLES

India's Constituent Assembly on Wednesday resumed its discussions on the Article relating to the mode of election of the Vice-President. The Article was passed.

After four other articles had been passed, the debate ended abruptly when the news of Sir Akbar Hydari's death was received, the House being adjourned immediately.

Mr Bharti said that the system of a single transferable vote was not suitable in single constituencies. The system of an alternative vote would be more suitable for single and multiple constituencies, he urged.

Replying to the debate, Dr Ambedkar said he could not accept any of the amendments moved. Referring to Mr Mohd Tahir's amendment seeking that the election of the Vice-President be conducted on the same lines as that of the President, he said that the respective systems of election were based on the functions the two dignatories were to perform.

The President would be head of the State, and would deal with matters relating to the Centre as well as the States, and it was proper that, in his election, Members of Parliament and also those of State Legislatures should take part. On the other hand, the normal functions of the Vice-President would be to preside over the Council of State, and only on very rare occasions would he be called on to discharge the duties of President.

It did not seem necessary, therefore, that Members of State Legislatures should be called on to take part in his election.

Regarding Mr Naziruddin Ahmed's amendment, Dr Ambedkar said that a joint meeting of the Houses of Parliament was considered necessary for the Vice-President's election in order to avoid the use of the postal system of casting votes.

Sending in votes by post was liable to create difficulties. Ballot papers might be lost in transit, or a candidate might collect the ballot papers through his agents and then sign them himself and post them to the election authority. It was to avoid all this that an Assembly of both Houses was suggested. He did not think that there would be any practical difficulties in convening such a joint meeting.

Referring to the suggestion made by Mr Bharti, he said that, if the substitution of "transferable vote" by "alternative vote" was merely a verbal change then it might be possible for the Drafting Committee to accept it. The House passed the article as amended by Dr Ambedkar.

The article dealing with the term of office of the Vice-President, and

(Continued on page 4 column 2)

ASSEMBLY DEBATE ON VICE-PRESIDENT

(Continued from page 1 column 1)

making provision for his removal from office, was then taken up. The article stated that the Vice-President should hold office for five years, and might be removed for incapacity or want of confidence by a resolution of the Council of State, passed by a majority of all the then members of the Council and agreed to by the House of the People.

Prof K. T. Shah moved the addition of a new clause, providing for an official residence for a Vice-President, a slary of Rs 4,500 per month and a pension after his term of office. He also denied that the salary and pension, once given, should not be diminished.

Prof Shah argued that such a high office should not be the exclusive monopoly of the rich, and the Government should not be charged with the accusation that it was intended to be the Government of the rich, for the rich and by the rich. There should be equality of opportunity, which would make it possible for the poorest in the land to aspire for such office. It was but proper that the holder of the second high office in India should be free from pecuniary difficulties.

He also moved an amendment enumerating reasons for which the Vice-President could be removed.

Mr H. V. Kamath moved an amendment to the effect that a censure motion against the Vice-President in the Council of State should be agreed to by the House of the People also by a similar resolution. He complained that the draft had been vague in this article, and asked whether the phrase "agreed to" meant by a simple majority, two-thirds majority or unanimously.

TWO-THIRDS MAJORITY

Mr Mohd Ali Beg urged that a censure of the Vice-President should be by not less than a two-thirds majority of members of both Houses. He said that the office was an important one, and the rule that applied to the President should be applicable to this case also in the matter of removal from office.

Mr Mohd Tahir suggested that the 14-day notice for a censure motion should be signed by not less than 20 members of the Council of State.

Speaking during the general discussion that followed, Mr R K. Sidhwa opposed Prof Shah's amendment for fixing the salary of the Vice-President. He said that, as ex-office Chairman of the Council of State, he was entitled to a salary and allowance that might be determined by Parliament.

Mr Sidhwa added that it was wrong to say that they should pay Officers more to make them honest. Honest men would always remain so irrespective of salary.

Mr Tajmal Hussain, supporting Mr Shah's amendment said that it befitted the high office of the Vice-President that there should be an official residence for him. In order to maintain the dignity of the office, too, his salary should be mentioned in the constitution.

Pandit Thakurdas Bhargava said the Vice-President performed a dual function—to act in the place of the President and normally to be Chairman of the Council of State. As acting President, he would come under the purview of Section 50 in regard to impeachment, but so far as the question of removal as Chairman of the Council of State was concerned, the provision was exactly the same as was applicable to the Speaker of the House of the People.

He stressed the need of specific rules that when a successful impeachment was carried out while he was acting President, the Vice-President should be considered ipso facto removed from his own office as well.

Replying to the debate, Dr Ambedkar expressed his inability to accept any of the amendments. He referred to Prof Shah's amendment, which sought to specify charges on which the Vice-President could be removed, and said that "want of confidence" was a very large phrase, big enough to include corruption, bribery, and so on. Therefore the amendment was not necessary.

Regarding the argument that the removal of the Vice-President should be governed by the same rules as those for the removal of the President, Dr Ambedkar pointed out that, although the constitution spoke of a Vice-President, he really was Chairman of the Council of State and, as far as his functions were concerned, he was merely the opposite number of the Speaker, of the House of the People. The same rules which were applicable to the removal of the Speaker were, therefore, applicable to the removal of the Vice-President.

Dealing with the point raised by Mr Kamath, Dr Ambedkar said that, whenever they had said that a certain resolution had to be agreed on, it was understood that it was to be passed by a majority of the House, unless they specifically mentioned the size of the majority. He added that a censure motion in the Council of State could be considered as passed only if a majority of all members of the Council of State voted for it.

The House rejected the amendments and adopted the Article.

The House passed without much debate three other articles relating to the power of Parliament to discharge the functions of the President in certain contingencies; the election of the President or Vice-President and power for the President to grant pardons, and to suspend, remit or commute sentences in certain cases.

It then took up the next Article, dealing with the extent of the executive power of the Union. Two amendments were moved by Mr Mohammad Ismail and Pandit Hridaynath Kunzru, who said that the power of the Central Executive to issue directives to Provinces in respect of matters on the concurrent list should be curtailed.

Discussion on the Article had not concluded when the House, on receipt of the news of the death of Sir Akbar Hydari, adjourned.

News of Sir Akbar's death reached the Assembly at about 1 p.m.

The Vice-President said that, though Sir Akbar was not a member of the House, everyone knew the services he had rendered to the country. The country was much indebted not only to him but also to his father.

Government of India offices were closed as a mark of respect.—API.

Indian Express
MADRAS: THU., DEC. 30, '48

INDIA'S PRESIDENT

WITH THE ADOPTION OF THE articles relating to impeachment and filling up of a vacancy, the Constituent Assembly has laid down the procedure for election, the terms of office and the rules of conduct of the future President of India. From the restricted powers of the head of the State, who is not also the head of the Executive, the indirect election commended by the house is understandable. Though in times of emergency the President is entitled to exercise extraordinary powers, his normal role is that of the French President rather than his American counterpart; even so, the leadership of the armed forces of the State strikes one as an unnecessary appendage especially, when in the British constitution whose parliamentary character India has come to adopt as a result of experience covering a quarter century, a like provision is not found in relation to the King. The oath of office as emerging from the discussion cannot be objected to since India's heritage receives recognition in the invocation of God if the candidate prefers it or merely a reiteration of his solemn intention to discharge his functions, namely, the protection, preservation and defence of the Constitution and the law of the country and further to devote himself "to the service and well-being of the people of India."

The method of election suggested in the draft constitution came in for a good deal of criticism, but the procedure recommended was adopted with the difference that only the elected members of the States' legislatures (lower Houses where they are bicameral) could participate in it. Prof. K. T. Shah's amendment that the President should be elected by the adult population in secret ballot was superfluous since it would have meant duplication of procedure after an election to the legislatures based on universal franchise; moreover, the machinery necessary for conducting it for a population numbering more than double that of the U. S. A. is difficult to evolve or put into practice. India is thus saved not only "the four months' debauchery" (Laski) but unnecessary waste of time, energy and funds; election by the members of the Union legislature and the States legislatures has the merit of both simplicity and workability. Since the draft constitution has brought about correspondence between the life of the Parliament and the term of the President as different from the five-year period for the former and the four-year office of the latter suggested originally by the Union Powers Committee, an apparent incongruity is eliminated. But one fails to understand why Dr. Ambedkar should have so vehemently objected to Prof. Shah's amendment including among the qualifications for election as President, resignation of the aspirant from the Ministry, in case he is already a Minister and further the giving up of his "rights, titles, shares and interest in any enterprise, business or trade." It is not as if all the Ministers would contest the election and even if a number of them do as Dr. Ambedkar believes, positions like directorship of companies may drag the President into the whirlpool of business.

Other articles concerning emoluments, impeachment in the event of misbehaviour, and filling up of a vacancy are necessary though less important as the President is not going to be a mere figurehead but the formal head of the Government. Nevertheless, one fails to see why he should be made to depend on the Parliament for determination of his emoluments and ellowances; no doubt, it is laid down that his salary would not be less than that specified in the Second Schedule (Rs. 5,500 per month) but there is no bar to its enhancement. Some at least fear that this proviso might prove a weapon of corruption in the hands of a less scrupulous Parliament or a President who may not be absolutely incorruptible. On the whole, the draft as approved by the Constituent Assembly more or less makes the President's powers coequal with his functions. In making him fairly represent the people as against the political parties, the framers of the constitution have chosen wisely. The unforeseen contingencies of a written constitution will always be there. While it is not possible to reduce to writing the entire sphere of the President's prerogative, every care has been taken to do so. With time and experience India should be expected to develop her own distinctive tradition, embodying in it the best features of the corresponding offices in England, America and France.

India news chronicle LC 12-11-46 198

STRONGER CENTRE UNDER NEW CONSTITUTION

Constituent Assembly Passes Article

(By Our Special Correspondent)

NEW DELHI, Thrusday.—Three Muslim members from South India faced an impatient House when they pressed their opposition to any enlargement of the Central Government's executive powers. Pandit Kunzru who associated himself to a limited extent with the opposition was included in the general criticism directed against the Muslim attitude.

Dr. Ambedkar, who spoke with more than his customary lucidity and effect, made short work of the opposition. He explained that the position as it would be under the Article as it stood was that in all cases the executive authority so far as concurrent laws were concerned would ordinarily rest with the units, that is, the Provinces and the States. Only in exceptional cases would the Centre prescribe that the execution of the concurrent laws would rest with the Centre. The Muslim amendment was to the effect that the Centre should have nothing to do with the administration of any law which related to matters placed in the concurrent field.

Dr. Ambedkar drew attention to the "peculiar phenomenon" that members who had spoken on the amendment were Muslims, one of whom Mr. Pocker Sahib, thought that every member who had a conscience must support that amendment. The special concern shown by Muslim members, Dr. Ambedkar said, took us back to the days of the Round Table Conference of 1930 when the Muslim League argued that they would have no objection to the Centre administering laws in the concurrent field if the Centre was not dominated by Hindus.

With the object of persuading the Muslim League to accept some sort of responsible government in the Province, the Secretary of State made a concession to the League whereby the authority of the Central Government so far as legislation in the concurrent field was con-

(Continued on page 3, col. 5)

India Assembly Proceedings

(Continued from page 1, col. 2)

cerned was to be strictly limited to issuing directions and was not to extend to the actual administration of the law itself. The Secretary of State was not accepting a principle but merely making a concession.

Mr. Pocker Sahib, who with the other two Muslim members was showing signs of discomfort as Dr. Ambedkar's arguments were taking effect, intervened to say that Dr. Ambedkar's observations were not valid because the League was no longer there and there was no province in India now in which Muslims formed a Government.

Dr. Ambedkar: The point is that Muslim members have not given up the pholo philosophy of the Muslim League. They are repeating arguments which were valid when the Muslim League was there (cheers).

He went on to claim that the Article as it was involved no violation of the Federal principle.

PRACTICAL NEED

Explaining the practical need of the extended power proposed to be given to the Centre, Dr. Ambedkar asked:—Supposing the Centre made a law prescribing certain penalties for obstruction of the untouchables in exercising the rights guaranteed to them by the constitution, and supposing a provincial Government was not genuinely in favour of abolition of untouchability and omitted to take steps to give effect to the Central Law, what was the Central Government to do? Should it sit with folded hands and merely wait on the provincial Government? Similarly with regard to laws relating to child marriage or working conditions in factories.

Furthermore, the provinces themselves must welcome the Centre undertaking the execution of laws in the concurrent field, because otherwise the financial and other responsibilities of such execution would add to the burden of the provinces.

The amendments were rejected and the Article was passed. The House also passed the next Article providing for a Cabinet system of Government.

ADJOURNMENT MOTION RULED OUT

Earlier, Vice-President, Dr. H. C. Mukherjee, announced that he had received notice of an adjournment motion from Mr. Mahabir Tyagi to discuss the attitude of the Government of India in respect of the recent events in Indonesia and Egypt.

The Vice-President said, under the rules of the Constituent Assembly, such a motion could not be moved. He, therefore, ruled it out of order.

Rule Number 26 of the Assembly, under which the motion was ruled out, says: "There shall be no motion of adjournment for the purpose of discussing any matter not included in the orders of the day or not connected with the work of the Assembly."

A. B. Patrika 31-12-49

FREE INDIA'S FIRST GENERAL ELECTIONS IN EARLY 1950

NEW DELHI, Dec. 30.

The first general elections under the new Constitution are proposed to be held in the first quarter of 1950.

It is understood that at the instance of the Prime Minister Pandit Nehru, a resolution is being drafted and is likely to be placed before the Constituted Assembly in the next few days to suggest expediting the consideration by the Assembly of the Articles in the Draft Constitutions relating to the elections.

The relevant Article 67 provides for the composition of the House of Parliament, formation of teritorial constituencies and election on the basis of adult suffrage.

The passage of this and other consequential Articles, it is contended, will facilitate the early setting up of the necessary machinery for the preparation of the electoral rolls and delimitation of the constituencies.

The Constituent Assembly is likely to adjourn on January 8 and meet again by the middle of May next. According to the present schedule, the Constitution is expected to be adopted by August 15, 1949.—(A.P.)

Nation 1-2-47

AVOID THE BLUNDER

The new Constitution which the Constituent Assembly proposes to give to India has been described by competent critics as a replica of the Government of India Act of 1935 in all essential particulars. Even the chapter on Fundamental Rights of the people is hedged in with provisions which have placed the personal liberty of the people at the tender mercy of the Executive. Professing to extend the bounds of individual liberty and democracy, the Draft Constitution aims at suppressing the growth of real democracy on the plea of ensuring the safety of the State. In nothing, however, does the Draft Constitution run farther away from the fundamental principles of democracy and secular State than its provision for reservation of seats for the so-called minorities. The very terms—"majority and minority" ill fit in with the ideal of a secular State. The moment the existence of minority and majority communities as separate political entity receives constitutional sanction, the State ceases to be a "secular" one. Division of people into "majority" and "minority" communities, whether on the basis of creed or any other ground, drives a wedge into their ranks and destroys their solidarity. Such division, however helpful it was for foreign domination which thrives on the ancient policy of "divide and rule" is obviously an anachronism in a Constitution which professes to ensure the secular and democratic character of the State. It is reassuring, therefore, to learn that the Constitution-makers at New Delhi have at last awakened to the sense that any compromise on this vital matter would undermine the fabric of the State and lead to collapse of the whole structure.

It is reported that the Advisory Committee on Minorities' Rights, which had earlier recommended reservations of seats for minorities, according to population strengths, with freedom to contest General seats, has realized its blunder and has agreed to examine the question *afresh* under the pressure of public opinion. Muslim Members of the Indian Constituent Assembly sprung an agreeable surprise when they condemned the provision for reservation of seats in no uncertain voice. The Parsis and Indian Christians were always opposed to the reactionary device of reservation of seats. The Sikhs seem to be still divided in their opinion on the wisdom of reservations. Nationalist Sikhs taking their stand on "Sikh' traditions of self-reliance and self-confidence" have spurned the proposal of separate electorates, reservation of seats and weightages with undisguised contempt. The only party which still seems to cling to the reactionary policy of reservation of seats happens to be the Scheduled Castes. If there is any party which has absolutely no claim either to separate electorates or reservation of seats in legislatures or elsewhere it is the Scheduled Castes. The very phrase Scheduled Caste was the invention of the political genius of British imperialism and was designed to serve its own end. If the rule of one nation over another is immoral, such immoral and unjust domination can be buttressed only with the aid of equally unfair and unclean methods. And what could be more unfair than to divide the Hindus politically? Without entering into the merits or demerits of the caste system, it may be pointed out that in spite of the castes, Hindus form one and indivisible community. It is one thing to raise those who happen to be back-ward in education, extending to them sympathetic treatment and better facilities for education and quite a different thing to grant them separate electorates and reservation of seats in legislative bodies. Nothing has done greater mischief to Indian nationalism than the device of separate electorates and weightages. The division of India, subdivision of provinces, the uprooting of millions of Indians from their ancestral houses, the blood-bath through which the country has passed, the miseries of the "sufferers from the partition," as the Congress has described the refugees, all can be justly traced to the introduction of creed into the domain of politics. The Congress committed a grave blunder by its negative attitude towards MacDonald's "Communal Award." It will repeat the same egregious blunder by accepting the principle of separate electorates and reservation of seats which will strike a deadly blow to nationalism and will weaken the secular State by creating fissiparous tendencies.

The Searchlight

ETERNAL VIGILANCE IS THE PRICE OF LIBERTY

SATURDAY, JAN. 1, 1949.

INDIAN PRESIDENT

The Constituent Assembly had discussed and adopted some important provisions in the Draft Constitution relating to the President and Vice-President of the Indian Union. Article 50 of the Constitution deals with the procedure for the impeachment of the President for any violation of the Constitution The article lays down that the charge shall be preferred by either House of Parliament and that no such charge shall be preferred unless the proposal to prefer such a charge was contained in a resolution moved after a notice in writing supported by no less than 30 members of the House. Sri Shankarrao Deo moved an amendment which was accepted by the House substituting one-fourth of the total membership of the House for supporting the resolution for impeachment of the President instead of 30 members. The impeachment of the head of a state is a rare phenomenon. This may be largely due to the fact that he has not much power to abuse and he is a titular head except in the American constitution. In the Indian constitution he is not a titular head, but he has nothing like the powers of the U. S. A. President. In India too he has powers, but there is very little scope for his misusing them for the reason that he can exercise them only on the advice of his Ministers. Notwithstanding the meagre chances of his misusing these powers, a constitution must provide for all contingencies; and the Constituent Assembly has rightly devoted some attention to this subject Sri Shankarrao Deo's amendment which was accepted did the right thing by raising the number of members supporting the resolution for impeachment, because 30 was a small number considering the grave step contemplated in a move to impeach the President.

The President has power under Article 59 of the Draft Constitution, now adopted by the Assembly, to grant pardons, reprieves, and remission of sentences. These powers are also enjoyed by the Provincial Governors, and nobody should grudge that they do. It was, therefore, right that the Assembly rejected an amendment moved by Mr. Tajmul Hussain to vest these powers in the President alone and not the Governors. Both in the case of Governors and of rulers of states where the latter will be the constitutional heads fully responsible to democratic states legislatures, there is no chance of this power being abused, because they will be largely guided by their Ministers. The Provincial Governors and these heads of states will be figure heads and there is no danger in vesting them with this power. The President of the Indian Union has large powers, but he too will exercise his functions on the advice of his Ministers under article 61. He can choose his Prime Minister and can dismiss him. He can proclaim an emergency and suspend the constitution. He can deliver messages to the legislature. Much will depend upon circumstances and the convention that may grow subject to the provisions laid down in the constitution.

The Assembly has also adopted one provision in Article 42 investing in the President the executive powers of the Union including "the supreme command of the defence forces of India" though "the exercise thereof shall be regulated by law." The President as the supreme commander of the defence forces is a feature of the constitution which is not usual in a parliamentary democracy. The president has the supreme command of the defence forces in America where as the chief executive authority he has vast powers which are denied to his corresponding number in other democracies. This feature undoubtedly fits in the American pattern. The British constitution is our prototype and there the king is not the supreme commander of the armed forces. In this as in other features, particularly those relating to the President, the Indian constitution strikes a golden mean. While this power may be useful in certain emergencies, it is clear that it will generally exist on paper without any significance in the actual working of the constitution. The Indian President will not look like only dry bones but he will have some flesh and blood also. He will not be a mere titular head as in the British constitution, but will have dignity and glamour which should be associated with his office.

A. B. patrika 3-1-49

RESERVATION OF SEATS

ARTICLE 292 OF THE DRAFT Constitution provides for reservation of seats for minorities (Muslims, Scheduled Castes, Scheduled tribes, Indian Christians in Madras and Bombay) in the House of the People (i.e. Lower Chamber of the Central Legislature). Article 293 authorises the President of the Union to nominate not more than two Anglo-Indians to the House of the People "if he is of opinion that the Anglo-Indian community is not adequately represented" in that House. Article 294 provides for reservation of seats for minorities in the Legislative Assembly of the States. Article 295 authorises the Governor of a State, "if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the State", to "nominate such number of members of the community to the Legislative Assembly as he considers appropriate". Article 305 lays down that reservation of seats for minorities shall remain in force for only ten years unless continued in operation by amendment of the Constitution.

These provisions are based on the Report of the Advisory Committee on Minorities, Fundamental Rights, etc., which was submitted to the President of the Constituent Assembly on August 8, 1947. The Committee was appoined by the Constituent Assembly on January 24, 1947. Sardar Patel is the Chairman of the Committee. The Report laid down that "all elections to the Central and Provincial Legislatures should be held on the basis of joint electorates". Then it went on to say :

"In order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature, we recommend as a general rule that seats for the different recognised minorities shall be reserved in the various legislatures on the basis of their population. This reservation should be initially for a period of 10 years, the position to be reconsidered at the end of that period. We recommend also that the members of a minority community who have reserved seats shall have the right to contest unreserved seats as well".

It will be noted that this Report was drawn up at a time when the partition of India was not an accomplished fact. The Committee was appointed more than four months before the announcement of the Mountbatten Plan, and its report was actually submitted before the emergence of the two Dominions as separate political units. At that time the Congress was prepared to go far in order to satisfy the Muslim League; it was prepared to sacrifice the fundamental principles of nationalism in the vain hope that concessions would prevent partition. We believe the provision for reservation of seats, coupled with the right to contest unreserved seats as well, was accepted by the Committee primarily for the purpose of satisfying the Muslim League. These concessions have not served that purpose. Partition has radically altered the political scene. We are determined to create a secular democratic State. It is now necessary to consider whether Articles 292-295, 305 are consistent with the basic character of a secular democratic State. We hope the Constituent Assembly will review the question in the light of the new situation in the country and undemocratic communal concessions will not be accepted as sacred promises or accomplished facts.

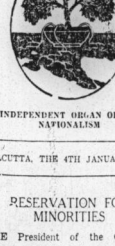
We do not want to deprive the minorities of their legitimate rights. We want them to secure an assured place in the State. If an unprejudiced examination of the problem shows that reservation of seats is necessary in order to safeguard the position of the minorities, we shall certainly welcome that arrangement even though it runs contrary to generally accepted democratic principles. But we read in the Report of the Patel Committee : "... it was known to us that minorities are by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the legislatures". This doubt became more vocal after the partition of the country. When the West Bengal Legislative Assembly discussed the Draft Constitution in September last Mr. Abul Hashim advocated "unadulterated" joint electorate without reservation of seats and declared that the Muslims were not prepared to be reduced to the position of a statutory minority by agreeing to the principle of reservation. Some other prominent Muslim speakers supported Mr. Hashim's view. We wrote editorially on September 23, 1948 : "The vehemence with which some Muslim League members of the West Bengal Assembly insisted on the abolition of the principle of reservation is in striking contrast to the attempt of the Muslim League to perpetuate separate electorates...."

Presiding at the All-India Shia Conference on December 31 Sir Sultan Ahmed expressed his satisfaction that separate electorates for Muslims were being abolished. He said: "No single act of the State has produced greater damage in the country as a whole and stifled the healthy spirit of competitive enterprise amongst Muslims...." Referring to the provision for reservation of seats he observed :

"It has been conceded in a kindly spirit of tolerance and fellow feeling and according to current principles of safeguarding the rights of minorities. From this point of view it is perfectly intelligible, but to my mind it appears that the disease of separation is thereby suffered to be prolonged and the germ will continue to be at work for these 10 years, with all its after-effects, however mildly it may operate".

These are wise words and they come from an enlightened leader of the Muslim community. He warns us clearly against the prolongation of the deadly "disease of separation". He warns his own community against a system which "stifles the healthy spirit of competitive enterprise amongst Muslims". Why should we allow "the germ" to "be at work" for ten years more? We are convinced that the system of reservation of seats blesses neither him who gives nor him who receives.

HINDUSTHAN STANDARD



AN INDEPENDENT ORGAN OF INDIAN NATIONALISM

CALCUTTA, THE 4TH JANUARY, 1949.

RESERVATION FOR MINORITIES

THE President of the Congress, Dr. Pattabhi Sitaramayya has recently appealed to the Sikhs to merge themselves in the body politic of the country in which he has also denounced the principle of reservation of seats as "illogical, without reason and unscientific." In the present temper of a large section of the Sikh community it would, perhaps, be rash on our part to expect a ready response to this appeal. But that does not detract anything from the wholesomeness of the advice tendered. Much water has run down the Howrah Bridge since the Constituent Assembly passed the resolution in favour of reservation of seats for the minority communities for the next ten years. The very deadlock in the Advisory Committee on Minorities' Rights over the question of the Sikhs is itself the proof that it was a mistake to pass the original resolution and to concede in the Draft Constitution reservation of seats to the Muslim community, the scheduled castes and the scheduled tribes in the whole of India and the Indian Christian community in the States of Madras and Bombay. It is difficult to resist the conclusion that what appears to be Sikh intransigence has received strong encouragement from the weakness the Constituent Assembly has shown towards the other minorities. It seems to us, therefore, that the way to make the Sikhs nationalist-minded is not to appeal to them in the way Dr. Pattabhi did but to disown the principle of reservation itself with the consequent deletion of the relevant clauses in the Draft Constitution.

It is unnecessary so late in the day to dilate on the evil effects of reservation of seats either in the Legislature or in the Services for minorities who claim their origin in religion but are bent upon functioning as political units without, however, any distinguishing political or economic programme. We have already paid too heavy a price for acquiescing in such baneful separatism to ignore with ostrich-like simplicity the consequences which may follow its retention even for a short period to come. Those who have fondly persuaded themselves to believe that communal representation is deprived of its fangs by the elimination of separate electorates which has been effected in the cases of Muslims, scheduled castes and Indian Christians, should do well to ponder deeply over the observations recently made by Sir Sultan Ahmed from his place as the President of the All-India Shia Conference. "To my mind it appears" he said, "that the disease of separation is thereby (by the retention of reservation) suffered to be prolonged and the germ will continue to be at work for these ten years with all its after-effects, however mildly it may operate." A few other Muslims including some who are members of the Constituent Assembly, have also spoken more or less in that strain. Indian Christians and Parsis have, of course, from the very beginning been opposed to any communal reservation. It would, we feel, be unwise on the part of the Constituent Assembly to ignore such clear manifestation of wisdom and to yield to the unreason of those who continue to clamour for the retention of a baneful legacy of a terrifying past. The retention of reservation for certain communal groups will inevitably give rise to highly insidious intrigues in the Legislature with disastrous repercussions on the composition and policies of the Cabinets in both the Centre and the States. However small the size of a particular group returned on the crest of reservation, such consequences are inevitable not only because there will exist more than one such group in every Legislature but also because personal ambition unfortunately yet plays some part in the inner politics of even the Congress Party in every State.

Our own inclination therefore is that the Congress Party in the Constituent Assembly should reopen the question of minority rights and be courageous enough to reverse the earlier decision in this respect. We do not for a moment suggest the wholesale denunciation of all the legitimate rights of the religious minorities or the suppression of the educationally backward sections which may result from a too doctrinarian adherence to the doctrine of fair field and no favour. What we recommend to the Congress members of the Constituent Assembly is a return to the formula of the League of Nations for the protection of the rights and interests of the minorities which many among them in the past had seriously championed to meet the arguments of the British in favour of progressive expansion of separatism for the Muslims and the scheduled castes. The Constituent Assembly has already passed a number of justiciable fundamental rights guaranteeing the religion and culture of all. We also note that in the Draft Constitution provision has been made for the appointment of Special Officers "to investigate all matters relating to the safeguards provided for minorities." If such "safeguards" are made more comprehensive within the wide range of culture and the provisions for the Special officers and the investigation by them are retained together with wide powers for the Supreme Court to adjudicate in disputes arising out of the working of those provisions then there need not remain any reasonable ground for complaint by the minorities. Of course such a reorientation of the minorities policy will have to be passed in the teeth of the opposition of some members of each minority group. But that is an unpleasantness which no ardent reformer can escape. We are, further, inclined to believe that the forcing of such a decision through the Constituent Assembly may not be more unpleasant than the forcing through the other day of the decision regarding uniform civil laws for all in India. In any case, our Constitution-makers should do well to face the unpleasantness. The alternative is bound to prove more unpleasant in the long run.

Indian Express

MADRAS: THURS., JAN. 6, '49

H.T. 6-1-49.

THE ASSEMBLY

THE CONSTITUENT ASSEMBLY after a brief discussion has prescribed the size of the future Parliament elected for a term of five years. The draft is adhered to closely. Adult suffrage is upheld in the clause passed on Jan. 4. Direct election is, of course, the governing principle. But there are to be considerable changes as compared with the past. Separate electorates are given a decent burial. Reservation of seats for specified minorities is a concession subject to future adjustment, as was indicated. Moreover, constituencies will be redrawn to reflect changes in population. Anomalies are to be avoided by sticking to the quota rule in respect of territorial constituencies. A major change is introduced by the abolition of special seats including those for trade and labour. Parliament would also be much larger in spite of a ceiling of 500, nearly the same size as the British Parliament.

The chief feature of the debate was the Muslim members' appreciation of the doctrine that there is no place for communal electorates. A common electoral list giving all voters an equal chance is the ideal. Many Muslim members spoke up for proportional representation. In theory, the advantages are many but in practice, proportional representation leads to too many parties and groups. Dr. Ambedkar stated effectively the case against P.R. which is in eclipse after the rise of totalitarianism in Europe. Dr. Ambedkar mentioned the existence of illiteracy as a bar to P. R. In fact, multi-member constituencies would seem a better way of securing due representation for minorities. The scheduled caste view was also against P. R. for a list means the exercise of first preference for candidates from a particular community and would be just the same as a separate electorate.

Apprehensions concerning adult suffrage are not without justification. It was not Mr. Biswanatha Das alone who suggested that the electorate would be unmanageable. The most important requirement is education. Regarding educational advance the Law Minister gave no assurances but he indicated that the reservation of seats would lead to a working agreement between majority and minority. The draft says nothing about the relations between parliament and the people from whom power is derived. It can hardly provide for appeals by way of referendum in the event of amendments to the constitution of the future. It can hardly fix in advance the responsibilities which are enforceable only by the party organisation. What it does is to lay down the course for the larger electorate which is an expression of the rule of equality. It has reason to be silent about the quota for scheduled caste, tribal and Anglo-Indian members. Incidentally Anglo-Indians numbering less than 500,000 are ineligible for representation by population quota. In effect there may be over-representation of Indian Christians and others and minorities need not harbour unnecessary fears especially when religion ceases to be a force in politics. The point raised by Sardar Bhupunder Singh about giving special weightage for urban inhabitants cannot be dismissed as meaningless. But the quota rule means that there is no difference between country and town. In the course of the debate observations about the purity of elections were not lacking. But one might properly suggest that the larger the electorate, the less the chance for corruption. Probably rules about election expenditure, returns, etc., would be made soon. Returning officers as well as candidates would probably stick to a system that was put in shape and described by Sir Laurie Hammond.

The elections would certainly cost much more if full correct rolls are really wanted in 1950. But democracy is not cheap and the voter's responsibility must be brought home to him. About things like the use of machines to sort and count ballot papers the new constitution cannot say anything. But the most obvious requirement is the correct selection of candidates. It is noteworthy that Congress has fixed a new code of conduct for those in public life and the machinery of selection will function with reference to criticisms heard at Jaipur. The draft makes the lower house larger in size; its composition may be different and the final, deciding point is election by all adult voters while the upper house will be chosen by legislators. The two-decker arrangement is meant to establish the federal authority that goes with provincial autonomy. But it is quite certain that we have left behind the institution set up under the reforms. The future house of States will be vastly different from the Council of State that was long content to undo the work of the Central Assembly.

MINORITIES AND THE LEGISLATURE

By passing the clauses in the Draft Constitution regarding the composition of the two Houses of the Central legislature and the method of election, the Constituent Assembly has made it possible for the provincial Governments to proceed with the preparation of electoral rolls, so that elections under the new constitution can be held as soon as the Draft Constitution is passed. The Lower House of Parliament will consist of 500 members directly elected by the people on the basis of adult franchise. Though the question of reservation of seats for minorities would come up for discussion later, representatives of minority communities tried to raise the issue during the discussions on this clause by suggesting the introduction of proportional representation by cumulative voting or by the single transferable vote instead of reservation under joint electorates on a population basis. Separate electorates being abandoned, reservation is a more straightforward method of tackling the issue than complicated systems of voting based on proportional representation. It was easy enough for Dr Ambedkar to point out that the system of proportional representation was impractical where a large electorate, most of it illiterate, was involved, as voters would not understand all their complexities. A more decisive argument was that while proportional representation would ensure representation of different sections in the legislature it would result in fragmentation of the legislature which would make stable government impossible. Instead of the constitution being worked by parties, it would introduce the group system whose weakness is seen at its worst in France. The final position which Dr Ambedkar took up was that since reservation under joint electorates was the result of agreement between the majority and the minorities, it would stand, but it would be open to any minority to decide for itself whether it would have reservation of seats or not. We hope that the minorities will realize that in a system of joint electorates under adult franchise, they can pull their weight only if they decide to abandon reservation of seats. But it is for them to decide finally where their interests lie.

Possibly because of this controversy, sufficient attention was not devoted by the Assembly to the revolutionary implications of the introduction of adult franchise. It is estimated that adult suffrage will place on the electoral rolls about 200 million voters. A large majority of these voters are illiterate and the possibility of their being stampeded into serious courses of action is one which should engage the attention of our leaders. The problem is particularly difficult in the States. For democracy to develop on sound lines, it is necessary for us to educate our masters, not merely in the sense of teaching them the three R's, but educating them politically to the extent of enabling them to realize the value of the vote which they will be called upon periodically to cast. It is a duty which our leaders can shirk only at grave peril to themselves and the whole country.

Amrita Bazar Patrika
6-1-49

SAFEGUARDS FOR MINORITIES

IN OUR LEADING ARTICLE published on January 3 we expressed our views against the propagation of separatism in our national life through the system of reservation of seats for the minorities in the Central and Provincial Legislatures of free India as proposed in the Draft Constitution. We are glad to find that in discussing the clauses relating to the composition of the House of People (i.e., the Lower Chamber of the Central Legislature) on January 4 almost all speakers, including Muslim members, disfavoured reservation of seats for minorities. Maulana Hazrat Mohani described the reservation of seats as "ridiculous" and said: "The Muslims did not favour reservation of seats to minorities as it was tantamount to an insult to Muslims". It is heartening to find that some at least of the leaders of the Muslim community in the Indian Union have discovered at last that minorities do not require special safeguards for the protection of their interests in our secular democratic State. Mr. Syed Karimuddin moved an amendment for the deletion of the proviso regarding reservation of seats to minorities. Mr. Hukum Singh criticised the reservation of seats as a greater evil than the communal electorates. Giani Gurmukh Singh Musafir, speaking on behalf of the Sikhs, expressed himself against reservation of seats for his community. He felt that reservation would certainly retard its growth and stifle its political consciousness instead of protecting its interests. This clear declaration is particularly significant at this critical moment when a section of the Sikhs are pressing for reservation of seats, weightage and even separate electorates. Many Sikhs are conclous of their own inherent strength and confident of the surviving capacity of their distinctive culture. They are naturally prepared to merge themselves in the great Indian nation instead of fostering disruptive tendencies which may endanger our newly won freedom.

Suspicions, however, die hard, and confidence is a tender plant of slow growth. The minorities cannot yet forget that they are minorities, nor can they think of a future without constitutional safeguards. Dr. Ambedkar rightly said: "In this country for a long number of years people have been divided into majority and minority. I am not going into the question whether the division was natural or artificial, deliberately calculated (?) by some people who did not want the progress of the country. The fact remains there were majority and minority. . . ." The bitter past overshadows all our creative efforts and delays the advent of a really progressive future.

Most of the speakers who dealt with the minority problem on January 4 favoured the system of proportional representation as an adequate safeguard for the legitimate interests of the minorities. Mr. Syed Karimuddin suggested that the representatives should be elected by means of cumulative vote in accordance with the system of proportional representation with multi-member constituencies. This change in the electoral system would, he thought, prevent the tyranny of the majority and "increase the influence of thousands of people who would otherwise have no voice in the Government". According to him, the adoption of the system of proportional representation was the only way to get rid of communalism and at the same time to secure the proper representation of the minorities in the legislatures. Prof. K. T. Shah, whose numerous amendments embarrass Dr. Ambedkar almost at every step, proposed proportional representation with single transferable vote and multi-member constituencies.

Dr. Ambedkar made it clear that the suggestions regarding proportional representation were not acceptable to him. On the theoretical value of this system of representation many students of political science will probably differ with him. He referred to the rejection by the British Parliament of the recommendations of the Royal Commission appointed in 1910 for the purpose of considering whether the system of single-member constituency with "one man one vote" was better, or the system of proportional representation was better. On that occasion the British Parliament came to the following conclusion:

> "Proportional representation would not permit a stable Government to remain in office because Parliament would be divided into so many small groups that every time any thing happening will displease certain groups in Parliament and they would on that account withdraw their support from the Government with the result that the Government losing support of certain groups and units would fall to pieces.

Dr. Ambedkar expressed his apprehension that the adoption of the system of proportional representation would expose India to similar risks, which he wanted to avoid at all costs. He wanted the future Government of India "to maintain a stable Government and law and order." To this excellent proposition everyone will agree, but it is not clear why Dr. Ambedkar apprehends that the system of proportional representation will inevitably "damage the stability of the Government." The conclusions which the British Parliament arrived at so many years ago need not hold good for all time and for all countries.

However, we agree with Dr. Ambedkar's conclusion that it is inadvisable in the present stage of our political evolution to accept a highly complicated electoral system like that of proportional representation. He rightly pointed out that this system presupposes literacy on a large scale, which is at present unfortunately absent in our country. In our view this is the only serious argument against the acceptance of the propositions favoured by Mr. Syed Karimuddin and Prof. K. T. Shah. We hope the minorities will reconsider their position in the new context and cease from demanding illusory safeguards like reservation of seats and proportional representation. Their salvation and the salvation of the country as a whole, lies in undiluted nationalism and not in the perpetuation of the dangerous compartmental system which vitiated our public life for about half a century.

India express 7-1-49.

Indian Express

MADRAS: FRI., JAN. 7, 1949.

ESSENTIAL CHANGES

IN A FULL-DRESS DEBATE ON constitutional amendments there was a definition of the limits of provincial autonomy. Certain constitutional changes are demanded till the new constitution with a stronger centre comes into being. The Home Minister's draft proposals asked for power to interfere in trade and industry, include merged States in the Provinces for administrative purposes and extend the life of legislative councils in provinces. The bill is perhaps a hotch-potch but its necessity is obvious in respect of matters like trade disputes and film censorship. The real aim is uniformity and the rights reserved to the Central Government do not take away much from provincial autonomy. The power to enact laws in relation to the concurrent list has been questioned but a sufficient answer is furnished by reference to the economic crisis. All controls have to be devised by the Centre and immediate, complete application has to be secured. Sardar Patel's point that the merger of States was secured at the instance of the Centre and that the people and provinces must have some constitutional guarantee as to continuing goodwill meets criticism from many directions. The destiny of the merged States must be shaped not by the Provinces in which the States are merged, but by the Centre whose legislation covers a wider field. The development schemes in the States demand superintendence. A point to consider here is that after the Secretary of State disappeared the general powers of supervision have devolved on the Central Government which has to secure many changes in the merged States. This is the argument that influenced the ready support of many representatives of States in the Constituent Assembly. A complete defence of the States Ministry was forthcoming from Sardar Patel who made mention of the rights of the provinces as well as the people in the States.

The plea of Dr. S. P. Mookerjee that an appellate tribunal for industrial disputes entailed certain changes was reinforced by reference to Central controls of key industries in future. The theoretical objections to extensive encroachment were formulated by Pandit G. B. Pant. This proves that the debate on the amendments was one connected with what are called "States Rights." The main amendments were withdrawn after an assurance that the Centre would regularly consult provincial governments when framing new rules. The outcome of the debate is very much as expected last month. The formal third reading concluded without any question as to the validity of Central interference in industrial matters. The main result would be that merged States would be rapidly transformed. As regards industrial policy Provinces would not be altogether ignored. Conferences have been so common that policy is really a joint concern. The fact that the changes merely anticipate the introduction of the new constitution has not been ignored by Dr. Kunzru whose plea that a precise limit should be set to Central intervention into the provincial field will perhaps have many supporters. But circumstances must override theory and the progress of many federal countries towards a unitary form of government calls for mention. In the past constitutional development has not been on the federal pattern. There is nothing like the American pattern of advance from Territory to Commonwealth. The devolution of power from the Centre to the provinces was the rule and the provinces scope and powers were prescribed invariably in central statutes. It is no use denouncing the Act of 1935 as the source of new evils. The hard fact is that independent policies in the provinces might frustrate approved purposes and some safeguards are required. By the latest amendments, Sardar Patel has merely put the Provinces in position for getting equally satisfactory and prompt results. The experts have consistently urged that planning and development must be undertaken by the Centre. The constitutional amendments merely translate this advice into law. More subjects under Central jurisdiction imply something more than uniformity in labour and other laws. It should be possible for the Centre to get the maximum results out of control generally in the future. Experience indicates that direction involves help and the Provinces stand to gain in a definite manner.

General Elections Early In 1950

Chair To Move Resolution In Consambly

(From Our Special Correspondent)

NEW DELHI. Jan. 6.

It is understood that as a result of discussions in the Steering Committee of the Constituent Assembly it has been arranged to move a resolution from the chair expressing the fervent hope that general elections under the new constitution may be held as far as possible, early in 1950. It is realised that practical difficulties will stand in the way of fixing the precise date and an earlier proposal to fix Jan. 1950 as the date for elections has been dropped. The idea seems to be to give indications of elections under the new constitution so that provinces may go ahead with preparations of electoral rolls etc. and delimitation of constituencies will have to be settled through the committee. Some kind of 'Ad Hoc' census will be necessary in East Punjab and West Bengal, it is realised.

The U. P. I. adds that the Steering Committee at an emergent meeting held yesterday adopted a motion inter alia recommending that the next general elections be held in "1950 as early as possible."

The meeting, which was attended by Pandit Nehru, and Sardar Patel further decided that the following motion be moved in the Constituent Assembly during the current session:—

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so as to make it possible for the elections to the Legislatures under the new constitution to be held in 1950 as early as possible."

The motion is expected to be moved from the Chair at Friday's sitting of the Constituent Assembly.

It is further learnt that electoral rolls will be prepared on the basis of the provisions of the new constitution already agreed to by the Constituent Assembly and in accordance with the following principles:

(1) That no person shall be included in the electoral roll for any constituency (a) if he is not a citizen of India, or (b) if he is of unsound mind and stands so declared by a competent court.

(2) That Jan. 1, 1949, shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll of any constituency unless he has resided in that constituency for not less than 180 days in the financial year ending Mar. 31, 1948. A person who has migrated into a province or an acceding State, on account of disturbances in his former place of residence, shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency.

Lobby talks indicate that the Nehru Government is anxious not to delay the holding of the general elections primarily with a view to meeting the oft-repeated charges by the Opposition that the elections were being deferred because of the present Government's anxiety to remain in power for as long as possible.

The Hindustan Times

FRIDAY, JAN. 7, 1949.

CENTRE AND THE PROVINCES

The debate in the Constituent Assembly over the Bill introduced by Sardar Vallabhbhai Patel to amend the Government of India Act, 1935, was enlightening in many respects. The Bill was introduced because of the need for uniformity in the awards of different Industrial Tribunals inquiring into industrial disputes, for providing the Central Government with sufficient power to implement its industrial policy, for suspending the triennial elections to Upper Houses in provinces which have bicameral legislatures and for completing the process of integration of States. The postponement of elections was agreed to without any criticism, as there was no point in holding them when the new constitution was likely to come into force in the near future. Controversy centred round the encroachment on the powers of the provinces implicit in the clauses giving power to the Central Government to assume executive responsibility in the provinces for subjects coming under the concurrent list.

Under the scheme of the Act of 1935, the Centre cannot exercise executive authority in regard to the subjects in the concurrent list. But since the new constitution gives the Union Government power to exercise executive authority in respect of the whole of the concurrent list, the framers of the Bill probably thought that the provinces would be agreeable to handing over to the Centre similar powers in the interim period till the new constitution came into force. But the provinces, though they were fully alive to the need for uniformity in administration in certain subjects coming under the concurrent list, wanted the power to be restricted to the specific subjects in which the need had been felt, instead of allowing the Centre to cut into the field of provincial authority over the whole field of the concurrent list. Ultimately, the Bill was passed with the amendments moved by Pandit Govind Ballabh Pant limiting assumption of powers by the Centre to labour and industrial disputes, control over production, supply and distribution of industries whose development was declared by Dominion law to be expedient in the public interest, censorship of films and collection of statistics regarding subjects included in the concurrent list. An amendment tabled by Pandit Pant for securing the previous sanction of the Governor-General before introducing legislation for this purpose was withdrawn after assurance given by Sardar Patel that the provinces would be consulted before the Centre undertook such legislation. There is a moral in the course which the debate took which those responsible for the government of the country and framing our new constitution will do well to take to heart. The striking of a correct balance between Central dominance and provincial autonomy will be the secret of good and efficient administration in this country for a long time and as the provinces will do well to keep all-India interests constantly before their view, the Centre also must do all it can to respect provincial sentiment. The enactment of the Amending Bill is a tribute as much to the good sense of the provinces as the accommodating spirit displayed by the Centre.

The only other matter over which there was a certain amount of controversy during the debate was as regards the integration of States. The process of merger and integration is as much in the interests of the States as of the country as a whole. As Sardar Patel pointed out, in effecting the transition the rulers have shown a spirit of patriotism and a sense of reality which are to their credit. To some extent, integration must inevitably affect adversely certain vested interests which have grown round the separate entity of these small States. Petty local ambitions may seek satisfaction in the retention of these States as isolated units. In the transition period there are bound to be anomalies which will give cause for local grievances. But there can be no doubt that under modern conditions these small States cannot continue to exist as administrative ulcers in the body-politic. They could continue to exist so long because there was a strong administration at the Centre ready to come to their rescue in times of crisis. With Sardar Patel, we would plead for patience regarding local grievances in the larger interests of the country. The task in which Sardar Patel is engaged, when completed, will contribute to the efficiency of administration and prosperity of the States as well as the rest of the country. There is no reason why any section of the people in the States should be less patriotic or less imbued with the spirit of sacrifice than the rulers themselves.

Hindu 8-1-49.

CONSTITUENT ASSEMBLY

LOWER HOUSES IN PROVINCES

ANDHRA OPPOSITION TO AMENDMENT

DEBATE POSTPONED

NEW DELHI, Jan. 7.

The Constituent Assembly had to-day to suspend consideration of the Article relating to the composition of the Provincial Legislative Assemblies following a controversy over Prof. Shibbanlal Saksena's amendment which suggested that the ratio between the number of representatives allotted to each territorial constituency and the population of that constituency should be the same throughout a province.

The memoers from Andhra were opposed to the amendment as its application would, they considered, prejudicially affect the understanding between Rayalaseema and the coastal districts of Andhra known as the Circars. The understanding, which formed the main basis of Rayalaseema agreeing to the formation of and inclusion in an Andhra Province, was that Rayalaseema should have representation in the ratio of five to six against the Circars districts, though the population of Rayalaseema is only half of that of the Circars.

If Prof. Shibbanlal Saksena's amendment is accepted, the implementation of this pact would be rendered impossible inasmuch as there can be no disparity in the scale of representation in regard to population between one constituency and another.

Prof. Shibbanlal Saksena has introduced the amendment on the identical line of the provision made in the Constitution by Clause 5 (c) of Article 67 in regard to the Central Parliament, holding that this principle should apply to the Provinces also.

After a brief discussion, the Vice-President said that he would ask Dr. Ambedkar to reply to the debate to-morrow when the Article would be voted on. He pointed out that this would enable parties in the House to come to an agreement. Constitution-making was a co-operative effort and the maximum agreement was therefore desirable.

The House agreed to this suggestion and proceeded to take up consideration of Articles 63, 64 and 65, all of which were adopted without any amendment and without much debate. The Articles relate respectively to the appointment of the Attorney-General of India, the conduct of business of the Indian Government and the duties of the Prime Minister in relation to the President of the Union.

Mr. K. Bharathi continuing the general debate on Article 149 (Lower House of the Provinces) pleaded for a uniformity in the scale of representation throughout the Provinces as far as possible. He said that with the maximum membership for the Lower House prescribed as 500, the ratio of representation in the United Provinces would be one representative for 1,10,000 and in Madras one representative for every 98,632 of the population. He explained the difficulties that might arise if the principle of uniformity of the scale of representation was not adopted. He said that there had been an understanding between Rayalaseema districts and the coastal districts (Circar) of Andhra, two principal groups in Andhra—to the effect that there should be an equality of representation between them. If the limit of one representative for 100,000 of the population was sought to be reduced to 75,000 in order to give representation to the backward areas then the Rayalaseema group would get 116 seats, the other part of Andhra would get 118 seats, Tamil Nad 218, Malabar 36 and South Kanara 14. Thus Andhra as a whole would get 234 whereas Tamil Nad would get 218 seats, though the population of Tamil Nad was 23 millions as against 20 millions of the Andhras. Such difficulties would also arise in other Provinces like the East Punjab. Though he was in sympathy with the idea of providing adequate representation to backward areas it should not operate as a matter of inequity to others.

Mr. Kulachar Chaliha (Assam) suggested that a new census should be taken in Assam also, otherwise, he said, the "general" community in Assam would suffer very badly. According to the present figures, the "general" community was made a minority. If reservation and weightage were given to backward and tribal areas, they would be given out of the quota of general constituencies. By this and other processes the majority population would be represented by a lesser number of members than their population warranted. He also pointed out that there was a large scale migration into Assam from East Bengal.

POSITION OF RAYALASEEMA

Mr. Nagappa replying to Mr. Bharathi's reference to Rayalaseema said that the weightage of representation for the five Rayalaseema districts was introduced not on a communal basis, but on consideration of economic and political backwardness of the area. He said that in 1937 an agreement was reached between the two groups of Andhra that the representation between Rayalaseema and the Circars should be in the proportion of five to six. He said that if the agreement was implemented, then the representation between them would be adjusted in this proportion from the total quota given to Andhra as a whole.

Prof. Ranga expressed himself in favour of the general principle that there should be no distinction between one constituency and another in regard to the quota of representation in relation to its population. But he pointed that there were special needs of certain areas, based on social and economic conditions, and not on communal or religious or anti-national considerations, and for this they should make special provisions. He instanced the case of Rayalaseema and said that it was the universal wish of all Andhras to see that the agreement then had entered into among themselves was put into practice and honoured. They had agreed that there should be weightage to the districts of Rayalaseema. He admitted that it was a ticklish question but appealed to the House to enable Andhras to make a distinction between the constituencies of Rayalaseema and the constituencies of the Circars. They had already agreed to the principle of such a distinction in the Central Legislature as well as in certain autonomous areas of Assam, so far as the Provincial Assembly was concerned. Acceptance of the distinction also in regard to Andhra would be conducive to better relationship between the two groups in Andhra.

Mr. Deshbandu Gupta said that a new census should be taken in Delhi Province also. He said that many Muslims had left Delhi for Pakistan and a large number of people had come from Pakistan. The total population of Delhi Province had almost been doubled and it should, therefore, be treated on the same footing as East Punjab and West Bengal.

Mr. Gopinath Bardoloi also urged the need for a fresh census in Assam. He pointed out that the last census had been disputed by the Congress Party in the Assam Legislature on the ground that it did not represent the actual strength and composition of the population in Assam. Furthermore, things had changed under the partition, and, according to official figures, about 400,000 had come from East Bengal as refugees into Assam. Any attempt at fixing representation without taking into consideration the inequity of the last census and the present movement of the population would be intolerable, he said.

Mr. Kalluri Subba Rao (Rayalaseema) assured the Tamilians that their quota of representation would not be affected. The weightage of representation to Rayalaseema would be given out of the quota allotted to Andhra.

Dr. Pattabhi Sitaramayya said that Andhra speaking people were the second largest community in India and they had been asking for a separate Province since 1924. They were asked to wait until a National Government was formed. There was an understanding between Rayalaseema and the coastal districts of Andhra reached when he was a co-President of the Andhra Provincial Congress Committee. The coastal districts of Andhra were more advanced politically and economically. In the future Andhra Province, they wanted to give the economically backward area of Rayalaseema an equal voice and influence.

Dr. Pattabhi pleaded for elasticity in the rule and said they should not adopt a principle in a steamroller fashion. He appealed to the House to defer the question so that a formula could be evolved.

The Vice-President, Dr. H. C. Mukherjee, asked the House to permit Dr. Ambedkar to reply to the debate to-morrow, as, he said, in the meantime an agreement might be evolved between various viewpoints. Constitution-making was a co-operative effort and agreement was desirable. He asked the House to proceed to take up Article 63.

The House then took up the Clause relating to the appointment of the Attorney-General for India. It stated that it would be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force. The Attorney-General will hold office during the pleasure of the President and will receive such remuneration as the President may determine.

Mr. Naziruddin Ahmed moved an amendment stating that the Attorney-General should retire from office upon the resignation of the Prime Minister, although he might continue in office until his successor was appointed or he himself was re-appointed.

Prof. K. T. Shah moved an amendment suggesting that the salary of the Attorney-General should be fixed by the Parliament instead of by the President.

Both the amendments were rejected and the House passed the Article as it stood.

The House also passed two other Articles without much debate. These related to the conduct of business of the Government and said that all executive action of the Government of India shall be taken in the name of the President. An amendment by Prof. K. T. Shah stating that instead of the "President" all action should be taken in the name of the "Government of India" was rejected after Mr. Ananthasayanam Iyengar and Mr. Raj Bahadur had pointed out that the President was the Chief Executive of the Union. The other Article stated that all decisions of the Council of Ministers should be communicated to the President.

The House adjourned till to-morrow.—A.P.I.

Amrita Bazar Patrika

7-1-49

SAFEGUARDS FOR MINORITIES

IN OUR LEADING ARTICLE published on January 3 we expressed our views against the prolongation of separatism in our national life through the system of reservation of seats for the minorities in the Central and Provincial Legislatures of free India as proposed in the Draft Constitution. We are glad to find that in discussing the clauses relating to the composition of the House of People (i.e., the Lower Chamber of the Central Legislature) on January 4 almost all speakers, including Muslim members, disfavoured reservation of seats for minorities. Maulana Hazrat Mohani described the reservation of seats as "ridiculous" and said: "The Muslims did not favour reservation of seats to minorities as it was tantamount to an insult to Muslims". It is heartening to find that some at least of the leaders of the Muslim community in the Indian Union have discovered at last that minorities do not require special safeguards for the protection of their interests in our secular democratic State. Mr. Syed Karimuddin moved an amendment for the deletion of the proviso regarding reservation of seats to minorities. Mr. Hukum Singh criticised the reservation of seats as a greater evil than the communal electorates. Giani Gurmukh Singh Musafir, speaking on behalf of the Sikhs, expressed himself against reservation of seats for his community. He felt that reservation would certainly retard its growth and stifle its political consciousness instead of protecting its interests. This clear declaration is particularly significant at this critical moment when a section of the Sikhs are pressing for reservation of seats, weightage and even separate electorates. Many Sikhs are concious of their own inherent strength and confident of the surviving capacity of their distinctive culture. They are naturally prepared to merge themselves in the great Indian nation instead of fostering disruptive tendencies which may endanger our newly won freedom.

Suspicions, however, die hard, and confidence is a tender plant of slow growth. The minorities cannot yet forget that they are minorities, nor can they think of a future without constitutional safeguards. Dr. Ambedkar rightly said: "In this country for a long number of years people have been divided into majority and minority. I am not going into the question whether the division was natural or artificial, deliberately calculated (?) by some people who did not want the progress of the country. The fact remains there were majority and minority. . . ." The bitter past overshadows all our creative efforts and delays the advent of a really progressive future.

Most of the speakers who dealt with the minority problem on January 4 favoured the system of proportional representation as an adequate safeguard for the legitimate interests of the minorities. Mr. Syed Karimuddin suggested that the representatives should be elected by means of cumulative vote in accordance with the system of proportional representation with multi-member constituencies. This change in the electoral system would, he thought, prevent the tyranny of the majority and "increase the influence of thousands of people who would otherwise have no voice in the Government". According to him, the adoption of the system of proportional representation was the only way to get rid of communalism and at the same time to secure the proper representation of the minorities in the legislatures. Prof. K. T. Shah, whose numerous amendments embarrass Dr. Ambedkar almost at every step, proposed proportional representation with single transferable vote and multi-member constituencies.

Dr. Ambedkar made it clear that the suggestions regarding proportional representation were not acceptable to him. On the theoretical value of this system of representation many students of political science will probably differ with him.

nately absent in our country. In our view this is the only serious argument against the acceptance of the propositions favoured by Mr. Syed Karimuddin and Prof. K. T. Shah. We hope the minorities will reconsider their position in the new context and cease from demanding illusory safeguards like reservation of seats and proportional representation. Their salvation and the salvation of the country as a whole, lies in undiluted nationalism and not in the perpetuation of the dangerous compartmental system which vitiated our public life for about half a century.

CONSTITUENT ASSEMBLY

LOWER HOUSES IN PROVINCES

ANDHRA OPPOSITION TO AMENDMENT

Amrita Bazar Patrika
7-1-49

SAFEGUARDS FOR MINORITIES

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THE STOCK EXCHANGE

BOMBAY, Jan. 7.

The following are the closing quotations : Bombay Dyeing Rs. 217-8-0; Central India Spg. Rs. 222-8; Colaba Land Rs. 20-8; Century Rs. 222-8; Colaba Land Rs. 16-0; Cesar & Sri. Indian Electric Rs. 24-0; Kohinoor Rs. 271-8; Phoenix-Old Rs. 315; Bombay-Burmah (New) Rs. 112-8; Meherhomjee Sugar Rs. 53; Bombay-Burmah Steam Rs. 62; Bombay Tramways Rs. 28-12; Andhra Valley Rs. 1-8-0; Tata Power Rs. 1-12-0; Tata Hydro Rs. 1-6; Tata Chemicals Rs. 18-8-0; Sirarpur Paper Rs. 1-12-0; Tata Steel 1st pref. Rs. 1-8-0; Tata Steel def. Rs. 1-12-0; Bengal Nagpur Rs. 16-0; Tata Construction Rs. 16

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GENERAL ELECTIONS IN 1950

Steering Committee's Recommendation

NEW DELHI, Jan. 6.—The United Press of India understands that the Steering Committee of the Constituent Assembly at an emergent meeting held yesterday adopted a motion 'inter alia' recommending that the next general elections be held in '1950 as early as possible'.

The meeting, which was attended, amongst others by Pandit Nehru, Prime Minister and Sardar Patel, Deputy Prime Minister further decided that the following motion be moved in the Constituent Assembly during the current session:

'Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so as to make it possible for the elections to the legislatures under the new constitution to be held in 1950 as early as possible'.

The motion is expected to be moved from the chair at Friday's sitting of the Constituent Assembly.

It is further learnt that the electoral rolls will be prepared on the basis of the provisions of the new constitution already agreed to by the Constituent Assembly in accordance with the following principles.

(1) That no person shall be included in electoral roll for any constituency (a) if he is not a citizen of India; or (b) if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January, 1949, shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll of any constituency unless he has resided in that constituency for a period of not less than 180 days in the financial year ending the 31st March, 1948

(4) That subject to the law of the has migrated into a province or an acceding state, on account of disturbances in his former place of residence, shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency.

Lobby talks indicate that the Nehru Government is anxious not to delay the holding of general elections primarily with a view to meet the oft-repeated charges by the opposition that the elections were being deferred because of the present Governments anxiety to remain in power for as long as possible.—U.P.I.

The Hindustan Times

SUNDAY, JANUARY 9, 1949.

TOWARDS DEMOCRACY

The Constituent Assembly has risen for long recess in order to enable its members to sit as the Legislature for the Budget session. The bulk of the work still lies before the constitution-makers since no more than 66 articles out of a total of 315 have so far been disposed of. When the session began on November 4 the President expressed the hope that the draft would be approved by December 10, the second anniversary of the day on which the Assembly first met. There was some justification for the President's hope. The provisions had been before the members and the public for over eight months and the principles underlying a majority of them had already been discussed and adopted by the House. But it was soon discovered that the members were in no mood to hurry with the work. The amendment-seekers, too, had their way. The Chair's proposal not to entertain any more amendments after the conclusion of the general discussion met with fierce opposition. The result was in evidence throughout the session. In addition to nearly 4,000 amendments in the 400 pages of the two printed volumes—all of them received up to November 11—the members had to cope with a regular flow of them day to day. If in these circumstances the House spent 36 sittings—totalling nearly 121 hours—to pass only 66 articles, it cannot surprise any one. The new powers given to the Chair to dispose of amendments and the hard-working Vice-President's constant vigilance did not make much difference.

But, perhaps, this unhurried pace has not been without some advantage. Many a complex problem has been solved without bitter controversy and those concerned have been given time to seek agreement on undecided issues such as the national language, renaming of India and relations with the Commonwealth. The Directive Principles of State Policy and the Fundamental Rights—two parts of the constitution containing direct assurances of freedom and democracy to the common man—have, meanwhile, been properly publicized and the country given a chance to appreciate the real significance of the change that came with August 1947. Provisions regarding the President and the Cabinet have also not been without interest since through them the country has adopted the system of parliamentary democracy. But it is the articles relating to elections that will attract the people's attention. Their adoption, along with the resolution passed on the last day, before the adjournment, cannot fail to convince the people that those in authority are keen to hold the first general elections under the new Constitution as early as possible. The Prime Minister himself has given the assurance that the Government are anxious to avoid all delay, and now that instructions are to be given to provincial Governments to expedite the work of preparing fresh electoral rolls, all suspicions regarding the Government's intentions should be dispelled.

An almost revolutionary provision was all but lost in the discussion of details. Few members took the trouble to visualize the effect of adult franchise on the political life of the country. All men and women above the age of 21 as on January 1, 1949, will, for the first time, have a say in the election of those who are to govern the country in the name of the people. Since the number of electors is to be multiplied almost ten times, the elections proposed to be held next year will, no doubt, be in the nature of an upheaval. The character of no legislature in the country can remain unchanged. Moreover, the country-wide activity before and during the elections, besides galvanizing the entire people, will show how far we have travelled towards democracy and the directions in which we need growth and progress. Thus, though the Constituent Assembly has left its task unfinished, it has already prepared the ground for long-awaited changes and brought fulfilment of the people's hopes nearer than it has ever been before. Let us hope that the coming twelve months will be utilized for proper education of the masses so that they use their newly-won political power with discretion and wisdom when the time comes for them to choose their new rulers.

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Hindustan Times 9-1-49

GENERAL ELECTIONS NEXT YEAR

RESOLUTION ADOPTED: C.A. ADJOURNS UNTIL MAY 16

(By Our Special Correspondent)

NEW DELHI, Saturday.—After perhaps the stormiest sitting in the session, the Constituent Assembly adjourned today until May 16, having disposed of the Article relating to elections to provincial legislative assemblies and passed a resolution to enable the provinces to go ahead with the preparation of electoral rolls.

It was the resolution which caused a furore. Tabled in the name of the Chair, it was expected to have been passed without a debate. A few members, however, objected to this procedure, arguing that since the motion was controversial it should not be moved from the Chair.

This view was vehemently supported by Mr Mahabir Tyagi and was further reinforced by a considered statement by the Speaker of the U.P. Assembly, Mr Purushottam Das Tandon. Mr Ananthasayanam Ayyangar was almost shouted down when he tried to reply to these objections.

The Vice-President, Dr Mookerjee, in the meanwhile had moved the resolution and announced his intention neither to accept any amendments nor to allow any discussion. The uproar which followed, however, forced him to retrace this step. He withdrew the resolution, which was then moved by Pandit Nehru.

The House was still in an excited mood and quite half-a-dozen members demanded clarifications. Pandit Nehru got up to deal with them, but found interruptions too irritating. Mr Kamath, as usual, was on his legs to raise some point, or another. Pandit Nehru, already losing patience, flared up and told the Chair that a member who raised all

Detailed report on page 11

kinds of points ten times in no more than ten minutes was certainly "misusing" the time of the House. "It's impossible" was his excited reaction.

Mr Kamath went on speaking while the Prime Minister was still at the mike, but after a short but persistent attempt to drown Pandit Nehru's sharply-worded sentences he gave in.

The change in the procedure allowed for a discussion and also resulted in a number of amendments being made to the resolution by Dr Ambedkar. Other members also moved a

Continued on back page, col. 4

C.A. Adjourns After Stormy Debate

Continued from page 1, col. 2

number of amendments, but in view of the modifications made by Dr Ambedkar the other proposed changes were not accepted.

The main objections to the resolution related to facilities for the registration of refugees as voters, the period of residence, and the date for determination of the elector's age. Some members also pointed out that in the absence of an authoritative definition of "citizens of India" the disqualification mentioned in the resolution would not be of great help. The clause disqualifying those of unsound mind "if so declared by a competent court" was also criticized.

Dr Ambedkar in his reply made it clear that the resolution was intended to help the refugees rather than to place any hindrance in their way. His amendments, he explained, were calculated to make the procedure of registration still easier. He defended the clause disqualifying people of unsound mind, arguing that the decision of a competent court was absolutely necessary before a man was declared to be not of sound mind.

The debate on the resolution took almost the entire time of the House, but before the sitting concluded, the Assembly passed the article concerning elections to the provincial legislatures debate on which was suspended yesterday.

The Article as it finally emerged lays down that the ratio between the number of seats to be allotted to each territorial constituency and the population of that constituency will be uniform throughout the States. The principle of weightage was thus rejected.

As to the demand for a fresh census in West Bengal and East Punjab, Dr Ambedkar gave the assurance that he would convey the feelings of the House on the question to the authorities. But in any case, if it was found necessary, the Article could later be amended to empower the President to hold an interim census.

ELECTIONS IN 1950

ASSEMBLY ADOPTS RESOLUTION

INSTRUCTIONS TO PROVINCES

MR. SAXENA'S AMENDMENT ACCEPTED

NEW DELHI, Jan. 8.

The Constituent Assembly to-day passed a resolution instructing the authorities concerned to make preparations for holding general elections to the legislatures as early as possible in 1950.

The House also disposed of the Article relating to the composition of Provincial Assemblies, discussion on which had earlier in the week been postponed.

The House decided that the maximum permissible strength of the Provincial Assemblies should be 500 and not every 75,000 of the population should have the right to elect not more than one member to the Assembly. Mr. Sibbanlal Saxena's amendment which sought to do away with any weightage for any constituencies in the provinces, was accepted by Dr. Ambedkar.

It will be recalled that a number of members had urged that the acceptance of this principle would deprive certain backward and under-populated areas such as the Rayalaseema districts of Andhra, from having due representation.

The House adjourned till May 16, 1949, when it will continue consideration of the draft constitution.

In order to save time and curtail discussion, the Vice-President, had sought to move the resolution relating to elections. Objection was raised and members pressed their point that the resolution should not be moved by the chair. Responding to the wishes of the House, the Vice-President gave up the idea of moving the resolution from the chair and called on the Prime Minister to move it.

When the Vice-President said he proposed to move the resolution, Mr. T. T. Kamath, on a point of order, said there was no rule of procedure under which the chair could move such a resolution.

Mr. Rohini Kumar Chaudhry requested the Vice-President to tell them under what rule of procedure the resolution was being moved. He said that normally, when the chair moved a resolution, no amendment or discussion was allowed.

Mr. R. K. Sidhwa stated that the Constituent Assembly, while sitting as a constitution-making body, was not competent to pass such a resolution. Instructions to the Provincial Governments for the preparation of electoral rolls would be issued by the Government of India. It was only when the House sat as a legislative body, therefore, that it could pass such a resolution.

Pandit Lakshmikant Maitra, on the other hand, contended that the House was a sovereign body and could do anything it liked. Further, there was the precedent of the chair moving a resolution on the death of Mr. Jinnah. The Constituent Assembly, sitting as a constitution-making body, had much wider powers than it had when it sat as a legislative body.

Mr. Dhulekar suggested that instead of the Constituent Assembly instructing the Provincial Governments, the resolution should instruct the Central Legislative Assembly to call on the Provinces to prepare the electoral rolls. Mr. Dhulekar suggested, the matter might be left over until the Legislative Assembly began its session in February.

Pandit Thakurdas Bhargava, while agreeing that the House was a sovereign body and that the chair could move the resolution, pointed out that there were controversial points involved in it and asked whether the amendments of which he had given notice would be allowed. For instance, there was the provision relating to refugees who would have to file a declaration before a court regarding their residence to entitle them to be enrolled as voters. Sixty or seven lakhs of people being asked to file declarations was no small matter.

Seth Govind Das said that there was nothing new in the resolution for all wanted early elections and the resolution merely carried out the general wish of the members of the House.

QUESTION OF PROCEDURE

The Vice-President, Mr. Mukherjee, while stating that it was embarrassing for him to defend the procedure he was adopting, said he recognised two facts—firstly, that the House was supreme and that there was need for a motion of this sort. If this supreme body did not move a motion, such adoption would itself justify the procedure he was adopting. As regards amendments, he had received only one. This showed that he had the whole House behind his proposal to have the motion moved from the chair. He would, therefore move it.

He was aware, Mr. Mukherjee said, that learned pundits of rules of procedure would argue about the Chair moving the resolution. Reading out from a statement he had prepared, Mr. Mukherjee recalled that for the last few days the House had been considering the articles in the new constitution relating to the general elections in some of the provinces. The next stage of work in the preparation of electoral rolls had been completed. The articles they had adopted laid down the principle and the basis on which the electoral work should proceed. They had also to indicate the time within which the electoral rolls would have to be completed. The matter was considered by the Steering Committee of the Assembly on January 5 and they had decided that a resolution on the subject should be brought before the Assembly and that it should be in the fitness of things if it was moved from the Chair.

Incidentally, Mr. Mukherjee said, the resolution would also allay the suspicion held in certain quarters. They were entitled it might be, that the House was not very serious about bringing the new constitution into force at an early date. He said he had received numerous letters from many quarters attributing very "unflattering" reasons for the delay in the life of the Assembly. These people did not realise the troubles through which the country had passed—the refugee problem, the Hyderabad problem and the troubles in Kashmir, not to say anything about the general disintegration of the economic structure. Nevertheless, it was desirable that such feelings of suspicion should be allayed. It was necessary, therefore, that the public should know that they were seriously thinking of holding the elections at the earliest possible date.

The Vice-President then read out the text of the resolution. At this stage, a number of members were again seen rising in their seats, ostensibly to protest against the procedure.

APPEAL TO VICE-PRESIDENT

Mr. Mahabir Tyagi appealed to the Vice-President to reconsider his decision to move the resolution from the Chair. He had a right to ask the Chair to do this. If the resolution was non-controversial, then it could be moved from the Chair and passed without any discussion.

The dignity of the Chair must be such that it should not warrant any kind of discussion. If a resolution of a controversial nature, was moved by the Chair here, future assemblies in the provinces would quote this as a precedent. It would be a bad precedent (hear, hear). He, therefore, suggested that the Chair should call upon some member of the House or of the Drafting Committee to move the

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ELECTIONS IN 1950

(Continued from page 7.)

resolution so that if anyone wanted to move amendments or speak on it, he could do so.

Babu Purushottamdas Tandon, Speaker of the U. P. Assembly, said the procedure which the Chair was adopting was "unheard of." (Applause). The Chair could only move motions which were accepted by the House as a whole. Even if there was one single member who raised any objection, then the Chair could not move such a resolution. (Hear, hear).

When the Chair moved a resolution, there should be no further discussion on it. But if the Chair moved a controversial resolution, then it would lead to stifling discussion in the House. The Chair should not be a party to such a resolution.

The Speaker of the C. P. Assembly, Mr. Ghanashyam Singh Gupta, said he endorsed every word of what Mr. Tandon had said.

Mr. Anantasayanam Iyengar, who came to the mike to defend the procedure proposed by the Chair, was contiguously interrupted by a number of members who urged him to "speak on the procedure" and not on the merits of the resolution. Mr. Iyengar was "trying to say that after all the resolution merely wanted that the elections should be held as early as possible. (Voices: Talk about procedure. Don't speak on the resolution).

Mr. Iyengar continued his speech amidst more interruptions said it had always been open to the President to move a resolution. ("No, no"). In all resolutions, there would always be some difference of opinion. He did not agree that a resolution moved by the Chair must be such that it had the approval of everyone.

A number of members were seen on their legs wanting to reply to Mr. Iyengar. The Vice-President asked him to further discussion, announced amidst cheers from the House, that he would ask a member of the House to move it. When he had put forward to move the resolution himself, he thought that he had practically the whole House behind him. Since then, he had found that there was a sharp difference of opinion among a number of members who urged that a proposition like this should not be moved from the Chair. He was after all a servant of the House. He would, therefore, request some one else to move the resolution.

PANDIT NEHRU MOVES RESOLUTION

The Prime Minister, Pandit Jawaharlal Nehru thereupon formally moved the resolution. "Had the House noticed said that although the Government had already taken certain steps preparatory to carrying the electoral rolls it was thought desirable that some indication of the wishes of the House on the matter should be made known. It was because of this that the House had, during the last few days, been discussing the provisions in regard to the elections. The resolution merely embodied the wish of the House for holding elections as early as possible. Some members had pointed out that in the draft they had considered did not cover all the disqualifications for voters when the House had adopted the particular article relating to voters' qualifications. He would point out that the resolution specifically stated that the rolls would be prepared in accordance with the principles adopted in the constitution. The objection that under the provisions of the constitution the refugees might be put to difficulty was also invalid. There was a specific clause that the Chief Commissioner was enough if they merely notified their intention of residence to the authorities. It was not a difficult matter for the refugees in their favour. He pointed out, however, that there must be some rules of procedure prescribed for everyone, otherwise it would not be possible to compile the rolls.

ELECTORAL ROLLS

Referring to the argument that until the citizenship clause in the Draft Constitution had been adopted, the electoral rolls should not be prepared, the Prime Minister pointed out that whatever future decisions might be adopted by the House in this matter would only affect a limited number of people—people who were refugees and others who resided outside India. For, all others would be entered in the rolls. But whatever the Assembly might decide in regard to the refugees would, he was sure, fit would affect only a small portion of the work for the preparation of the electoral rolls.

Mr. Bhupendra Singh Man asked how the refugees could satisfy the condition of 180 days' residence in the province as from March 31, 1948, as provided in the resolution.

Mr. H. V. Kamath said the resolution only mentioned "unsoundness of mind" among the disqualifications for voters. The Assembly, he reminded the House, had adopted an Article which listed many other disqualifications such as convictions for crime, corruption, etc.

Mr. Rohini Kumar Chaudhury said the resolution disqualified those persons who had been declared by a court to be of unsound mind. The process of going to the Court for getting a man declared of unsound mind was a very lengthy one. Would this mean that the enumerators of such sons of unsound mind to be found in every village or town would be included in the voters' list?

Mr. Algurai Shastri said that no provision had been made as to the manner in which constituencies were to be formed. Another clause should be included in the resolution clarifying the qualifications for citizens.

Mr. Deshbandhu Gupta raised a point of order stating that the resolution referred to provisions of the new Constitution "already agreed to by the House" but Article 149 had not been agreed to by the Assembly. Unless that Article was passed, the resolution could not be passed, he said.

The Vice-President. Mr. Mukherjee said that the point raised would be answered by Pandit Nehru.

Replying to the various points raised by members for the purpose of clarification, Pandit Nehru said that originally he had no intention of moving the resolution. Because it was said, that the Government was coming into the House by bringing a resolution, he wanted to reply to the points that had been raised. He said that Mr. Kamath had stated that only two disqualifications for voters had been mentioned in the draft constitution. Others, Pandit Nehru pointed out that the electoral rolls were already to be prepared on the basis of the provisions of the new Constitution and these disqualifications were only an addition to them.

"GENERAL DIRECTION TO GOVT."

Referring to Mr. Rohini Kumar Choudhry's query, Pandit Nehru said that it was obvious that persons who were of unsound mind were not fit persons to exercise votes but the question was who to determine that? It was for this reason that they had provided that a competent court should determine at this point. Such provision was in existence in the Schedule.

Speaking generally, Pandit Nehru said that this was only a preliminary electoral roll and this would no doubt be checked later in accordance with the rules that might be formulated by the House. He assured the House that the resolution was on the nature of a direction. It was not a part of the Constitution and its wording should not be precisely looked upon from the point of view of a statute. The general direction was meant to the Government who had to transmit it to be authorities in charge of the preparation of electoral rolls.

Pandit Nehru also referred to Clause 4 of the resolution relating to the provision that a refugee should have declared his intention to reside permanently in the constituency concerned if he was to be enrolled as a voter. He agreed that there was a need for special provision to be made to enable them to vote. He added that nobody was going to be permanent residents or refugee camps. Clause 4 was to facilitate the refugees to exercise their votes and it was intended that the residence qualifications should not affect their case.

Pandit Nehru said that it was very difficult to go into the details at this moment and he hoped that the House would adopt the resolution.

Mr. Rohini Kumar Chaudhri moved an amendment to the effect that the determination of "unsound mind" should not be limited to a declaration by a competent court as that would include a large number of people of unsound mind in the voters' list. Ninety-nine per cent of people who were of unsound mind, he said, had not been declared unsound by a competent court.

Mr. Chaudhry moved another amendment suggesting that a person who had migrated into a Province or acceding State on account of disturbances should be entitled to be included in the electoral roll of a constituency if he filed a declaration of his intention to reside in that constituency and that he need not be a permanent resident of that constituency.

Mr. Hanumanthaya moved an amendment suggesting that the date 1950 should not be fixed for the next election. Their intention, he said, was to hold the elections as early as possible. Perhaps it might not be possible to hold the elections in 1950. He added that the elections would be based on adult franchise. He was not sure whether it would be possible to hold the elections in 1950. In order to be more accurate it was better not to fix a specific date.

Mr. Brijbhanlal Saxena moved an amendment stating that the date with reference to which the age of the electors should be determined should be January 1, 1950, instead of January 1, 1948.

Mr. Mahabir Tyagi moved an amendment suggesting deletion of the qualification of a voter enumerated in the resolution.

Pandit Thakurdas Bhargava said that the resolution ought to have been passed by an Act of Parliament. He pointed out that they were specifying the qualifications of voters in the resolution without defining citizenship and constituency.

Pandit Bhargava and Mr. Nagappa also moved more amendments to the resolution.

Seth Govind Das who initiated the general debate on the resolution supported the principle of the resolution. While he appreciated the Government's bona fides steps for the next election, it also assured the people in the country that the Government were meant to complete its work as early as possible.

The resolution would clear the misgivings that existed in the minds of certain sections of the public regarding the intentions of the Government to hold the elections as early as possible.

IMPLICATIONS OF RESOLUTION

Mr. Santhanam urged that the effects of the resolution should be understood first. He did not think that it would have the same validity as the articles of the Constitution. It was a declaration on a provision to facilitate the preparation of the electoral rolls. If the Constitution was formally brought in operation on August 15th, then the electoral rolls prepared under the resolution might be considered valid though they would have to be ratified later. The authority which would have to ratify them would take note that it was authorised by the Constituent Assembly. Opposing the amendment of Prof. Shibbanlal Saxena, Mr. Santhanam said that if it was accepted, the electoral rolls prepared would have to be revised or be changed and it would mean complete preparation of the new electoral rolls.

More important than the electoral rolls, he said, was the appointment of election machinery. He urged on the Government to appoint a Delimitation Commission so that the entire constituencies could be demarcated by the end of this year and the final preparation of the electoral rolls and the arrangements of other agencies for election could be proceeded with expeditiously.

Mr. Maitreya Mishra pointed out that there had been delay in the conduct of general elections but he did not think that the resolution as it now stood compensated for the delay. He said that there were no definite provisions regarding the qualifications of the voters in the resolution. The delay which they wanted to avoid would have to be avoided by the resolution. The better method would be to pass the Constitution itself expeditiously.

Before replying to the debate Dr. Ambedkar moved a number of amendments to the resolution.

Outlining the reasons why he would accept Mr. Saxena's amendment, he told members Dr. Ambedkar said that Mr. Mahabir Tyagi had no objection to the principle of the resolution but he wanted the details to be deleted. It seemed to him that the decision taken by Mr. Tyagi indicated that he had confusion in his mind about the objects and aims of the resolution. The aim of the resolution was merely to make a declaration that it was the intention of the Constitution that as far as possible elections might take place in 1950 but to give a positive direction to the authorities in charge of preparing the electoral rolls as to what should be the basis of the rolls. Merely to make a declaration would not be giving a direction to the authorities concerned. Mr. Ambedkar said, would be futile. Unless electoral rolls were prepared in time sufficiently before the due date of elections, no election could be held on that date. The second part of the resolution embodied the direction without which the resolution would be futile and the mere declaration. By the amendment, they would be setting out an objective without setting up a machinery and the machinery with which that objective could be carried out. Really speaking the force of the resolution which Mr. Tyagi wanted to omit was more important than the part which he wanted to retain.

HOLDING OF ELECTIONS IN 1950

Referring to Mr. Hanumanthaya's amendment suggesting the deletion of reference to the year 1950 in which the general elections should be held, Dr. Ambedkar said that there was a great deal of force behind it. Likewise according to Mr. Hanumanthaya, if the Constituent Assembly were to make this declaration fixing the date for elections and if for some reason either connected with the preparation of electoral rolls or some other circumstances, it became impossible for holding the elections in 1950, then the Assembly would be placed in a somewhat difficult position.

Dr. Ambedkar said that, in the view of the Drafting Committee of the resolution, Mr. Nehru, there was a certain amount of feeling in the country that the Constituent Assembly was not functioning and its work as quickly as it ought to. It was also felt that the Assembly was leisurely and dilatory and the Constituent Assembly was not serious in having an early election. To remove this sort of feeling in the country, it was necessary to fix some target date. If reasons justified the postponement of the date, it would be necessary for the Assembly to postpone the elections but they would then be in a position to place before the country justifiable grounds for such postponement. He was sure, the country would appreciate them if a postponement became necessary.

Speaking about Prof. Saksena's amendment suggesting the substitution of January 1, 1950, for January 1, 1948, with regard to the qualifying age of 21 years for voters is to be determined, Dr. Ambedkar said that its object was that there ought not to be considerable time between the date on which the electoral rolls were prepared and the date on which elections were held. In other words, the electoral rolls must not be stale or out of date. Dr. Ambedkar said that if elections were to take place in 1950, then the electoral rolls prepared on the basis of voters qualifications of being adults by January 1, 1949, be deemed stale rolls. The rolls generally would lag behind the date of elections by one year.

He said that it was not possible to accept Pandit Thakurdas Bhargava's amendment because in anticipation of the elections taking place in 1950, instructions had been issued to the Provincial Governments to proceed with the preparation of the electoral rolls on the basis of adult suffrage. The acceptance of Mr. Bhargava's amendment would mean a waste of all the work that had already been done.

Replying to Mr. Rohini Kumar Choudhry's amendment, Dr. Ambedkar said that Mr. Choudhry was asking for "something quite impossible if not ridiculous". They all agreed that every person who was of unsound mind should be deprived of his vote. But, the question was who was to determine whether a person was of unsound mind or not. To give authority to village Patwaris to judge whether a person was of unsound mind or not was just like elevating a cabin boy to the position of the captain of a ship.

AMENDED RESOLUTION ADOPTED

The House adopted the resolution as amended by Dr. Ambedkar which read as follows (other amendments were either rejected or withdrawn):

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps, so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

"Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution agreed to by this Assembly and in accordance with the principles hereafter mentioned, namely: (1) that no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court; (2) that January 1, 1949 shall be the date with reference to which the age of the electors is to be determined; (3) that a person shall not be qualified to be included in the electoral roll for any constituency unless he has resided in the constituency for a period of more than 180 days in the year ending on the 31st March, 1948. For the purposes of this paragraph, a person shall be deemed to be ordinarily resident in that constituency or has a permanent place of residence therein, if, notwithstanding anything in the last preceding paragraph 3 above, a person who has migrated into a Province or acceding State on account of disturbances or fear of disturbances in any area before the 31st March, 1948, shall be entitled to be included in the electoral roll of an area if he files a declaration of his intention to reside in that area permanently in that area."

Dr. Ambedkar afterwards replied to the debate on Article 149 relating to the composition of legislative assemblies. Discussion on this clause, it will be recalled, had been postponed in order to enable members to reach agreed conclusions regarding the amendments.

Dr. Ambedkar to-day accepted a number of amendments which in effect, raised the maximum permissible strength of the provincial assemblies to 500 from the originally proposed figure of 300. Dr. Ambedkar withdrew his own amendment which had suggested the figure of 450. Dr. Ambedkar accepted another amendment which said that representation in the Provincial Legislatures shall be on the basis of not more than one member for every 75,000 of the population. The original clause said that there would be one member for every 100,000 of the population.

Dr. Ambedkar also accepted Mr. Sibbanlal Saxena's amendment which introduced the following new clause in the Article: "The ratio between the number of representatives allotted to a territorial constituency and the population of that constituency as ascertained at the latest census officially of which the relevant figures are published, shall, so far as practicable, be the same throughout the State."

CENSUS FIGURES

Replying to the debate Dr. Ambedkar said, the members had raised two points. The first related to the census figures to be adopted for the purpose of these elections. A great deal of argument was concentrated on the fact that the last census figures were more than one decade old and did not accurately represent the true State affairs in regard to the relative proportion of the different communities.

There was a great deal of force in these arguments. Even the Census Commissioner's reports justified this criticism. He would like to add while on this point that the Scheduled Castes had suffered more than any other community by these manipulations during the census. In the Punjab, other communities were trying to eat them up in order to augment their own strength and to secure a larger representation in the legislature. These poor people, living mostly as landless labourers in villages scattered here and there, without any economic independence and without any support from the police or magistracy were being forced by certain powerful communities either to return themselves as members of that community or not to return themselves at all.

In Bengal too the same thing had happened. He, therefore, appreciated the sentiments expressed by the members during the debate. Something would have to be done in order to see that the next elections were conducted properly. All that he could say at this stage was that he would convey the sentiments expressed in the House to those in authority dealing with this matter. He had not the least doubt that it would be properly attended to. If the House was not satisfied with the census figures, at some later stage an amendment to the Constitution might be moved, permitting the President to order an interim census, if he so desired, before the elections.

As regards the other point raised during the debate, he wholly supported Mr. Sibbanlal Saxena's amendment. Mr. Saxena's amendment dealt with weightage in representation. They had in the Constitution eliminated all sorts of weightages. It was but right that this principle should apply to representation in the provincial legislatures. He welcomed Mr. Saxena's amendment.

The House passed the article with the amendments which Dr. Ambedkar accepted.

On a motion by Mr. Satyanaran Sinha, the House adjourned till May 16, 1949, when it will resume consideration of the Draft Constitution.

66 DRAFT ARTICLES ADOPTED

NEW DELHI, Jan. 8.

A survey of the working of the Constituent Assembly indicates that during the 36 sittings in the present session, 66 Articles of the Draft Constitution were accepted out of a total of 315 Articles and eight Schedules.

The Assembly, which began its session on November 4, held 36 meetings before the recess for the Jaipur Congress. The Assembly sat for another eleven days after the Congress session, thus making a total of 36 sittings.

For the first five days of the session, the Assembly did a double shift—both morning and afternoon. For the rest of the session it did not sit after lunch. The precise working period during the 36 sittings were 120 hours and 43 minutes.

It is stated that the maximum attendance in the House on a day did not exceed 199 members, out of a total of 302 members.—U.P.I.

National Standard 6-1-49. 183

Bicameral Legislatures

THE Constituent Assembly's decision on bi-cameral legislatures is not wholly consistent. The system can be either good or bad, but it cannot be both. If the Centre and the provinces of Madras, Bombay, U.P., East Punjab, West Bengal and Bihar are willing to "saddle" themselves with two legislatures, there is no reason why others should not. It is astonishing that no less a person than Dr. Ambedkar regards it as a curate's egg. If it is bad in parts, why should not the egg be thrown out outright? We do not endorse the facile assumption that a bicameral legislature is a spoke in the wheel. But it is patently superfluous under one-party rule when the Upper and Lower Houses are dominated by "like-minded" legislators.

There is a fallacy in the belief that men who are not in the "confidence" of the people have no right to sit in the councils of the nation. Even under the most highly-evolved democracies talented and experienced persons are loth to encounter the rough and tumble of the hustings. In order that their abilities might not be lost to the State, they are given a place in the Upper Houses. Democracy in India is only on people's lips and not in their hearts or habits. They would not vote for one who is not in the pantheon of their gods and goddesses. It is because popularity is preferred to ability that democracies sometime expose themselves to deserved attacks.

All [illegible] countries and others have opted for bicameral legislatures. In them the Upper House plays a useful, if not a significant, part. The Sculbury Commissioners were quite right in commending the bicameral system for free Ceylon. They stated that men of talent and experience should not be "lost to the councils of a nation not blessed with a superfluity of persons of that calibre." Are we to delude ourselves into the belief that the party in power in India abounds in men of that calibre? In any case, we need not regret the Constituent Assembly's decision which is not in conflict under a political set-up as it exists in India today!

Indian Express 9-1-49.

The Constituent Assembly has provided for the legislature of the future. There is to be a second chamber with a few nominated members. The Lower House is to be elected by adult suffrage for five years. Discussion was not protracted but pleas for P. R. were many. For the Upper House elections from the Provincial legislatures will be arranged on the basis of P. R. The President is to table a resolution about elections in 1950, though there are doubts about the value of the 1941 census figures for fixing constituencies. The States are to enjoy representation in both Houses though some States will have representatives only in the Upper House. The Constituent Assembly has made an end of separate electorates. There is to be reservation of seats for minorities though a common electoral roll is the aim.

Some changes in the existing constitution have been voted by the Assembly. The amendments seem to strengthen the Centre. The Centre is also authorised to deal with merged States. In spite of pleas that provincial autonomy should not be infringed, the Constituent Assembly accepted the argument that in respect of trade controls, industrial disputes, etc., the Provinces should merely carry out orders. The essential point that unity will be promoted by a strong Centre was stressed. The advantages of common action in regard to labour and food policy are obvious. Apart from being a victory for the States Minister the constitutional amendments allay misgivings about the future of States. The State Congress split in Hyderabad has widened and both sides are preparing for a trial of strength. The chances of arbitration look small and it is fairly certain that a continuance of emergency administration will be enforced by the concessions made by the Nizam as regards his own revenue. The Jamait delegation in Hyderabad has asked for goodwill and understanding under the military administration while the Socialists ask for several drastic changes. The merger of Junagadh preceded that of Mayurbhanj which is now part of Orissa. There have been ministerial changes in Madhya Bharat and Bhopal has experienced an agitation for a merger. The future of Kolhapur is still in doubt but it is impossible for the Ruler to escape the pressure of events referred to by Sardar Patel.

A Thought for Today

He is happy whose circumstances suit his temper; but he is more excellent who can suit his temper to any circumstances. —Hume.

Times of India 10-1-49

BUILDING INDIA

Careful Work Will Pay Dividends

Constitution-making in these complex days is a massive business: when applied to a country of the size and variety of India the task takes on unprecedented proportions. Critics of the progress made would do well to remember that Rome was not built in a day nor did it emerge in its full panoply for many a year. We do not suggest that a freely made *swadeshi* constitution must linger unduly in the creating, but there is gain rather than loss in adequate deliberation. The Government of India Act of 1935 took a deal of devising: India's own production according to indigenous genius, if tempered by the advantage of foreign experience, can only acquire the stamp of the best domestic quality by the most careful tailoring to the peculiar physique of a body politic which is, even as it is being constitutionally clothed, growing and changing apace. If the progress made by the Constituent Assembly has disappointed enthusiasts for target-dates, at least it shows a disposition for thoroughness in welcome contrast to some other species of blue-prints presented to the nation. This should result in a mechanism of Government which will operate as smoothly as written stipulation can provide. Unfortunately, the rate of creation and ratification prolongs the diversion these proceedings mean for administrators and legislators from the manifold practical problems so urgently requiring single-minded attention. Yet sight must not be lost of the fact that through the constitution itself means are being provided for the progressive solution of fundamental obstacles to economic and social regeneration on a sound, stable and uniform political pattern.

ECONOMIC FIELD

In the economic field one of the practical developments with immediate consequences was the passing last week by the Constituent Assembly of Sardar Vallabhbhai Patel's Bill to amend the Government of India Act of 1935 in such a way as to give the Centre more power in the implementation of its industrial policy.. We have long urged greater authority in economic matters for the Centre and less for the provinces, some of whom have shown a distressing tendency to arm themselves with powers of which they have little need. Moreover, conflicting decisions of industrial tribunals throughout the country have piled another unnecessary burden of uncertainty on to industry's already bent shoulders. As Sardar Patel suggested last month, the Bill provides for the establishment of a Central Tribunal or an appellate authority whose decisions could establish precedents for the various provincial tribunals. It must be realised, of course, that enactment of the Bill will not alone secure complete uniformity of judgment throughout the country, but with the correct degree of co-operation from all concerned it should be possible to remove a great deal of the chaos which surrounds industrial disputes. As regards industries figuring in the concurrent list, it is obvious that Government are right to take powers which will enable them to assume a larger measure of control. Already the Centre has considerable authority over development, but it is not difficult to imagine circumstances in which regulation of production and distribution should also be exercised in the national interest. That provinces might fear undue interference was only to be expected, but they have clearly been reassured since the new Bill was discussed with them and received their approval. Moreover, Sardar Patel announced that the provinces would be consulted before any Central action is taken in respect of the concurrent list, while relevant views exchanged between the Centre and the provinces would be laid on the table of the House. Further administrative details and some experience in practice will be necessary before it can be seen how far the new moves will go towards curing the current economic ills with which they are concerned, but without any unjustified inroads into the provincial domain the enactment appears to provide at least part of the basis on which uniformity of economic policy can be built. It does not, however, make a Central Ministry of Economic Affairs any less necessary.

ELECTION PROSPECTS

It is unfortunate that further postponement of this constitution business should require resumption in New Delhi's least kindly months, but the urgent current affairs of the nation have naturally to take their turn in priority. There seems, however, no insuperable obstacle to some more encouraging summer venue being selected for further constituent proceedings. In the meantime further undue delay in implementing the new constitution has been wisely avoided by the expedient of passing the clauses dealing with the composition of the future legislatures at the Centre and in the Provinces and enabling existing administrations to proceed with all the vast arrangements for country-wide elections on the basis of adult franchise. Recent experience has given rise to some natural doubt as to whether in fact all will be ready by the first month of 1950, but, provided the back of the necessarily gigantic preparations has been broken, the country can proceed to the first fully democratic choice of its rulers at such time as seems most appropriate. There still remain many ticklish problems to be settled if those elections are to be held in the healthiest and, therefore, most rationally helpful atmosphere. Various points involving minorities are still on the political ironing board, including that of the Sikhs, and both Indian States and provincial delimitations still await a final formula of approach which will give the constitution itself, on sufficiently elastic yet at the same time firm lines, the desired quantum of general acceptance. The odds are happily in favour of amicable and sensible solution if for no other reason than that so many equally controversial difficulties have been overcome with conspicuous success in the last twelve months.

EDUCATING PEOPLE

It is to be hoped that while the country awaits the final codification in constitutional form of its democratic hopes and aspirations, efforts will be made not only to educate the immense electorate, which will be the future master of the land, but also to diffuse as far as possible among the populace some knowledge and understanding of the Constitution itself. There has inevitably been much in the discussions of the Constituent body which was redundant and even irrelevant, but there has been no less a great deal of thoughtful comment and erudite interpretation not least from Dr. Ambedkar. The sooner simplified, indeed child's, guides to the more basic aspects of all this are made available in schools, colleges and institutions for adult education, the better. Persisting restrictions on newspaper space have prevented much that is enlightening and explanatory in structural process from reaching even such of the public as take an intelligent day to day interest in the evolving document. Unavoidably the need to postpone decision on certain clauses and to deal with others out of their chronological order has made still more difficult the easy comprehension by the ordinary citizen of all the implications of what has been done and remains to be done.

A Thought for Today

He is happy whose circumstances suit his temper; but he is more excellent who can suit his temper to any circumstances.

—Hume.

Times of India 10-7-50

BUILDING INDIA

Careful Work Will Pay Dividends

Constitution-making in these complex days is a massive business: when applied to a country of the size and variety of India the task takes on unprecedented proportions. Critics of the progress made would do well to remember that Rome was not built in a day nor did it emerge in its full panoply for many a year. We do not suggest that a freely made *swadeshi* constitution must linger unduly in the creating, but there is gain rather than loss in adequate deliberation. The Government of India Act of 1935 took a deal of devising: India's own production according to indigenous genius, if tempered by the advantage of foreign experience, can only acquire the stamp of the best domestic quality by the most careful tailoring to the peculiar physique of a body politic which is, even as it is being constitutionally clothed, growing and changing apace. If the progress made by the Constituent Assembly has disappointed enthusiasts for target-dates, at least it shows a disposition for thoroughness in welcome contrast to some other species of blue-prints presented to the nation. This should result in a mechanism of Government which will operate as smoothly as written stipulation can provide. Unfortunately, the rate of creation and ratification prolongs the diversion these proceedings mean for administrators and legislators from the manifold practical problems so urgently requiring single-minded attention. Yet sight must not be lost of the fact that through the constitution itself means are being provided for the progressive solution of fundamental obstacles to economic and social regeneration on a sound, stable and uniform political pattern.

ECONOMIC FIELD

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Hindustan Standard 10-1-49

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DEADLINE FOR GENERAL ELECTION

THE directive which the Constituent Assembly has given to the Authorities concerned to prepare electoral rolls and take all necessary steps so that "elections to the Legislature under the new Constitution may be held as early as possible in the year 1950" is not in all respects such as we would like it to have been. Pandit Jawaharlal Nehru himself had to admit while replying to criticisms that the resolution was of a general nature. It is certainly unsatisfactory from the point of view of lakhs of refugees who have migrated into India from Pakistan. It is unfair to demand of the refugees the mental initiative and physical effort to "file or make a declaration of intention to reside permanently" in India. It is doubly unfair to them because nothing has been inserted in the resolution to make it absolutely clear that the claim of such refugees will not be governed by the provision in the previous clause that a person to be enrolled in a constituency must have resided in that constituency for "not less than 180 days in the year ending on March 31, 1948." We have very grave apprehension that if the Provincial Governments do not lay down precise rules in this matter in the meantime many of the Authorities may with ostensible justification reject the applications of refugees who do not satisfy the residence qualification clause. These, however, are details in respect of which the appropriate Authorities happily will have wide powers to fill up the gaps. The resolution as a whole is good and timely. The broad directive contained in it gives the lie direct to the campaign which some public men and certain political parties unfortunately have been carrying on to the effect that the present incumbents of office at the Centre as well as in the provinces not having the courage to face the electors, will delay general elections as long as they can just for the purpose of keeping themselves in power.

By the fixation of the deadline for the first general election in free India under the new Constitution the Constituent Assembly has also ensured a thorough examination of the Draft Constitution before its enactment. The earlier proceedings of the session which has just concluded were not, in fact, quite satisfactory from the democratic standpoint. These seemed to have been substantially influenced by the report which had somehow gained currency before the commencement of the session that the new Constitution would be finally passed on January 26. The proceedings naturally were vitiated by a certain degree of hurry. There was noticed impatience in that part of the House which was presumably keen on passing the Constitution as quickly as possible. Members on the other side who wanted the Draft to be amended were, on the other hand, discontented and smarted under a feeling that they were being suppressed and that the House as a whole was not being given the opportunity to consider their amendments coolly. Such an undesirable situation arose mainly because those on the Government side were keen on an early election and also laboured under the idea that the preparations for elections could not commence before the passing of the Constitution Act. The last act of the Assembly in the present session has satisfactorily resolved the complicated problem and has done away with the urge to hurry the Constitution through. The critics of the Draft will hereafter get, as they fully deserve, all the time and all the opportunity to place their points of view before the Constituent Assembly and the country.

But the chief merit of the decision, as we have said, is that it has belied the criticisms and insinuations of the critics of the present incumbents of office. The Nehru Government have, by causing the deadline for the general election fixed, at least a year in advance of the time for the actual elections, established before the world that to them Democracy certainly means something very much more than a name to swear by. The atmosphere, we feel, has been completely cleared. Pandit Nehru and his colleagues have not only signified by this gesture their complete surrender to the democratically-expressed will of the people but have also given the opportunity to their critics to come into power if they can. We hope the critics will take full advantage of the opportunity. They have got not only the certainty of a general election with more than a year's time to prepare for it but also the adult franchise for which they have agitated and on which they have banked. Those at least of them who swear by Democracy should accept the offer in the spirit in which it has been made,—they have got the right to appeal to the supreme court of the people's will in order to get its verdict on the comparative merit of the respective programmes and the comparative trustworthiness of the two groups of leaders. They can have no justification, hereafter, to take recourse to extra-constitutional methods even for influencing the Government, not to speak of changing it in view of the constitutional road to power that has been very chivalrously opened to them. They may take it as a challenge also if they like. In any case, the stage has been set for a clean and honourable contest between the Congress and its critics which we are sure all the world will watch with interest. So far as we are concerned, we have always said that these critics, however clamorous may they be, have no following in the country worth the name. Let them prove if they can that we and all other supporters of the Congress and the Nehru Government have been in the wrong.

THE HINDU

TUESDAY, JAN. 11, 1949.

ELECTIONS IN 1950

THE decision of the Constituent Assembly that elections under the new Constitution should be held as early as possible in 1950 will be endorsed by public opinion as eminently sound. The difficulties of the task of preparing electoral rolls and making other arrangements for a country of three hundred millions on the basis of adult franchise are certainly not to be underrated. But, after all, so momentous a change as the transfer of power from British to Indian hands was effected in less than three months. It may of course be contended that the country had to pay dearly for this precipitancy. Be that as it may, the need for holding the elections with as short a time-lag as possible after the birth of free India should be obvious. We do not overlook the fact that constitution-making is a complicated business. But if Mr. Nehru thinks, as Mr. Ambedkar said he does, that "there is a certain amount of feeling in the country that the Constituent Assembly was not proceeding with its work as quickly as it ought to," he ought to know, for no one is in a better position to feel the pulse of the country. There is at any rate a section of opinion that holds that the Assembly is attempting too much in trying to perfect an elaborate Constitution, making detailed provision for every conceivable contingency. That apart, it must be recognised that the political situation to-day is somewhat anomalous. When Britain made up her mind to transfer power she did the obvious thing in putting the administration as a going concern into those hands which alone were capable of accepting and discharging that onerous responsibility. The Congress was not only the party that had the solid backing of the entire country; it was also the best-organised party. And few impartial observers will deny that, in the face of tremendous odds, it has on the whole done well in keeping the country on even keel while at the same time striving to give effect to progressive reforms to which it had been long committed. The fact that the Prime Minister should feel that the country should be enabled to go to the polls within a year is a measure alike of the success that has attended the Congress's efforts and of its anxiety to see that, with the first definite signs of return to the normal, the people should be given an opportunity to make a free and unfettered choice from among the political parties which might compete for their favours.

But if this latter objective is to be fully realised, it will not be enough if the various Governments expedite setting up and bringing into operation the huge electoral machinery that adult franchise requires. The intensive education of the vast new electorate that will go to the polls for the first time in 1950 will call for all the resources of skill and statesmanship that we can muster. India is definitely launched on parliamentary democracy to which the system of government by party is integral. In view of this, the Congress, while it may bate no jot of its claim to work for the good of the nation as a whole, will have to recognise that any concrete social and economic programme which it may put forward might provoke a certain amount of opposition which other parties would wish to utilise for their own advantage. In the interests of the Congress and of the larger interests of the country this is not to be deplored. A healthy opposition might indeed prove an efficient instrument in promoting the political education of the masses. It is therefore essential that the Congress should define a little more closely than it has done in the past its programme which should serve as a blueprint for democracy. This would have a wholesome effect on the general political situation by making it necessary for other parties to be equally explicit, whereas now they find it more convenient to deal in large generalities and to suggest that if they had the running of the country a beneficial revolution would take place overnight. And the elections should be regarded as a natural and legitimate way of finding what answer the public will give to certain fundamental questions. The Constitution has made a declaration in favour of a secular State and the present Government has repeatedly said that it would resolutely oppose Communalism in every shape and form. If the verdict of the electorate should be—as we are sure it will be—unmistakably in favour of this view that would give the death-blow to communalism. In the same way the electorate should be in a position to declare its attitude towards parties which do not rule out violence or which have extra-national loyalties. Subject to the paramount needs of peace and order, political parties which are anxious to raise these and other equally important issues should have all reasonable freedom to put their case squarely to the voters. We have no doubt that if this is done the best and sanest elements in the country will prevail.

India express
11-3.

Draft Constitution Adopted

PATNA, Mar. 9.

The delegates meeting of the All-Indi Socialist Party Conference adopted thi afternoon the draft constitution of th Party.

The motion to pass the constitution wa pressed to a division and 305 voted for an 95 against.

Earlier, the meeting adopted an amend ment to the clause dealing with the "ob ject" of the Party in internationa spheres. The original clause stated "t work with Socialist parties in other coun tries with a view to eradicating imperial ism, etc.

Mr. S. P. Misra moved an amendmen that the words "Socialist Parties" be omit ted and that the words "Socialist Forces be inserted. This was accepted.

Mr. A. Deshpanday (Karnataka) move an amendment to the membership clause that no one who is a party to any econo mic exploitation be allowed to be a mem ber of the party.

This aroused a heated debate and was eventually negatived.

Mr. Gita Prasad Sinha (Bihar) moved an amendment to the qualification of dele gates and wanted it to be laid down that no one was eligible to be member of any executive committee of the party unless he puts in 14 hours work per week for the party. The amendment was accepted by the House.

After some other amendments of minor nature were negatived or withdrawn, the draft constitution as amended was put to vote when the chairman announced that 229 had voted for and 76 against. The op positionists forced a re-count. This time it resulted in 305 voting for and 95 against.

India - EXPRESS 9-4-49 178

GENERAL ELECTIONS BY FEB. 1951 AT THE EARLIEST

New Constitution By Aug. Next, Says Pattabhi

BOMBAY, Apr. 8.

THE first general elections under the new constitution will be held at the earliest in February 1951, if the constitution is finally passed by the middle of August 1949. This authoritative declaration was made by the Congress President, Dr. Pattabhi Sitaramayya, at a Press conference today.

Dr. Pattabhi said "If the Constituent Assembly meets on May 16, as it has already decided to do, it will see through the constitution and it is generally expected that we shall be able to finally pass it by Aug. 15 next. As soon as the constitution is finalised, its provisions can be implemented. In fact, in the Draft Constitution there is a provision for the election of the President of the Indian Republic even before the general elections are held. Once this draft proposal for such election of the President is adopted, that portion of the constitution can immediately be implemented. There is no ting standing between the pa[illegible]he constitution and its implementation.

"We expect to get the electorates ready and the electoral rolls printed in a year's time. I leave the public to realise the magnitude of this problem. Under the old constitution there were three and a half crores of voters out of a total population of 39 crores of undivided India. But under the new constitution, with adult franchise in partitioned India, we shall have 17 crores of voters in a total population of 30 crores. Every man and woman will be a voter. You can imagine the immensity of the problem of printing 17 crores of voters' names, not once but twice. If all the printing presses in India work day and night the minimum time required to print the lists of 17 crores of voters will be at least one year.

"Considering the interval of two years between the passing of the Acts of 1919 and 1935 and the holding of the general elections on both the occasions, it may not be wrong to estimate a similar period between the passing of the new constitution and the actual date of elections. Not only had electoral rolls to be prepared, but objections has to be considered and disposed of in respect of preliminary rolls, and the rolls had then to be finally printed. There was also the question of carving out the electorates. Under the new set-up, the number of members of both the lower and the upper houses at the Centre would be somewhere about 750, whereas

(Continued on Page 5).

Pattabhi On General Elections

(Continued from Page 1).

the strength of the present Constituent Assembly was only 320.

Strength Of Provincial Assemblies

"The provincial assemblies will likewise be enlarged, the rate being one member for every 100,000 voters", Dr. Pattabhi said. "Thus, we will easily have 500 members for the Assembly in Madras, though Madras can choose to have a lesser number. Similarly, in the United Provinces on the population basis the total number of members will exceed the upper limit of 500, but the maximum has been fixed at 500. Thus you will have to carve out 500 constituencies in provinces like the U.P. and Madras. All this is a very difficult process. The formation of constituencies will have naturally to await the completion of at least the preliminary electoral rolls, because the constituency has to take into account the total number of voters in each area. Once this is done, we have to prepare in detail the numebr of voters in each electorate. A year and a half is the minimum period required for this work, to be done. This work can be taken in hand only after the passing of the constitution, because the electoral rolls should not be older than one year.—A.P.I.

"If, therefore, the constitution is finally passed in August 1949, it stands to reason to expect the elections under the new constitution in February 1951. That is the earliest possible date for the new elections. Even this is dependent upon everything running smoothly without any accident or incident.

Hindu 25-4

DRAFT CONSTITUTION OF INDIA

U. S. JOURNAL'S TRIBUTE TO LEADERS

NEW YORK, April 23.

The New York *Herald Tribune* to-day paid a compliment to Indian leaders in an editorial discussing the proposed constitution for India.

"The Indians seem to have among their present leaders an unusual number of men of high ethical standards and extraordinary ability", the newspaper said.

"This great asset offers hope that no problem they meet will prove to be beyond solution".

The *Herald Tribune* said the task of the members of the Indian Constituent Assembly in considering the draft constitution was exceedingly difficult because of the peculiar nature of India.

"The country has a diversity of cultures, and faces the same forces of social revolution now prevalent in most of Asia", the newspaper added.

"The Assembly members must write a constitution for men as highly civilised as Jawaharlal Nehru as well as for tribal peoples in the hills, a constitution for Brahmins and for untouchables, for Hindus and Muslims and Christians, for illiterate peasants and for the owners of tremendous steel mills.

"They are compelled to do this in an atmosphere of change while untouchables are being relieved of oppression, Maharajas are losing their power and peasants are demanding a larger share of what they produce".

The editorial continued: "It is easy to understand perplexities of the constitution-makers when it is realised they are constructing an entirely new Government for a country that is even more complex than the United States and is changing even faster.

"Despite all this, however, progress so far seems to be excellent. The constitution presumably will be well made".—PTI-Reuter.

Hindu 7.5.

DRAFT CONSTITUTION

ASSEMBLY DEBATE TO CLOSE BEFORE AUG. 15

NEW DELHI, May 6.

A determined effort to conclude the discussion on the Draft Constitution of Republican India in the next three or four months' time so as to enable the Government of India to proclaim to the world its emergence as a sovereign independent Republic from August 15, 1949, is expected to be made by the Constituent Assembly which is to commence, what is generally regarded as its final session on May 16.

Lobby talks indicate that after the bold and dignified stand taken up by the Prime Minister of India, Pandit Jawaharlal Nehru, about the new political status of India at the recent Conference of Dominion Premiers in London, members of the Constituent Assembly are anxious that a formal proclamation to that effect should be accelerated as much as possible.

It is expected that Pandit Nehru will address the members of the Constituent Assembly on the implications of the decisions which were adopted at the Commonwealth Conference and that he may urge the House to expedite the final adoption of the New Constitution of India by concentrating only on major issues and eliminating discussions on issues of lesser importance as far as practicable.

The question of having morning or evening sittings of the Constituent Assembly or both, during the forthcoming session, will be decided by the House at its first sitting on May 16. While suggestions have emanated from some quarters that there should be both morning and evening sittings of the House in order to expedite the finalisation of the Constitution, a spokesman of the Congress Party expressed the opinion that the House is likely to favour only morning sittings, leaving the afternoons free for party meetings where many intricate issues may be thrashed out and agreed conclusions evolved. This procedure, it is claimed, would eliminate protracted discussions on the floor of the House and also economise time.

Enquiries in Constituent Assembly Secretariat reveal that important issues relating to the Constitution which await decision by the House at its forthcoming session include, among others, (1) fundamental rights relating to the provision for acquisition of private property by the State, (2) citizenship, (3) financial relations between the Central Government and the Provinces, as also between the Centre and the States or States' Unions, (4) constitution of the Upper House in the Provinces and (5) allocation of legislative powers between the Centre and the Provinces.

After all the clauses of the Draft Constitution are adopted, the House will adopt an important motion fixing the date on which the New Constitution is to come into force. On the date so fixed, the Constituent Assembly will meet as the Parliament of the new Republic of India and elect its provisional President. Transitional provisions of the New Constitution will come into operation from that date. The new Parliament will also pass the electoral laws after which the electoral rolls, which are now being prepared, will be published and all preliminaries relating to general elections will be proceeded with.—UPI.

Hindu 11-5-49

CONSTITUENT ASSEMBLY

TO MEET AGAIN ON MAY 16

PRIORITY FOR CLAUSES ON ELECTIONS

NEW DELHI, May 10.

The Prime Minister, Pandit Jawaharlal Nehru, will seek the Constituent Assembly's approval of the London agreement on the Commonwealth issue when the Assembly meets here on May 16. The debate is likely to last for two days.

The resolution to be moved by Pandit Nehru reads: "Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations as set out in the official statement issued at the conclusion of the Conference of the Dominion Prime Ministers in London on April 27, 1949".

The Steering Committee of the Constituent Assembly, which draws up the day-to-day agenda, met to-day and is understood to have decided that clauses pertaining to elections should be taken up after the resolution on the Commonwealth is adopted.

BILL TO AMEND INDIA ACT

Sardar Vallabhbhai Patel will pilot a Bill to carry out certain formal amendments to the Government of India Act, 1935.

To-morrow, the Advisory Committee on Minorities will meet under the Chairmanship of Sardar Vallabhbhai Patel. The most important question to be decided by the Committee is the representation to be given to Sikhs. There is a proposal before the Committee, it is stated, to give representation to Harijan Sikhs just as Hindu Harijans have been treated in relation to Caste Hindus.

The Constituent Assembly will decide the time of the daily sittings. Indications are that the House will meet from 3-30 to 7-30 p.m.

The Congress Assembly Party is likely to hold its meetings in the mornings on days when the Assembly will be in session.

The forthcoming session is expected to pass the Republican constitution by August 15. So far, the House has passed about 60 out of the 314 clauses and eight schedules. If the constitution is to be passed by August 15, the clauses will have to be adopted by July 15, whereafter the Drafting Committee can revise the arrangement of the clauses and the constitution as a whole can be debated and adopted.

At the last session of the Assembly, which concluded on January 8, the House instructed the Provinces to prepare electoral rolls and take all other steps so that elections under the new Constitution might be held as early as possible in 1950.

According to present trends, the elections are likely to be held in 1951, but the Republic will come into being much earlier.

Clauses so far agreed to at the consideration stage include those relating to the territory and jurisdictions of the Union. Fundamental Rights, directive principles of State policy, the Union Executive and Parliament and the Lower Houses of the State Legislatures. Clauses on citizenship and property rights were held over.

The House has a formidable list of about 3,000 amendments to be disposed of and hundreds more are expected, but past experience shows that most of them may not be moved.—API.

CONTINUED ON NEW

The Indian Constitution

(Cont, from page 3)

if we accept one English word which is supposed to have got some amount of currency, then that word behaves in a peculiar manner. It brings with it 1,2,3 and slowly, steadily, surely a number of its derivatives and then a number of its compounds, ultimately a whole series, a whole family of words, single and compounded, and then phrases. It acts as a snowball. It acts as a communalist who surrounds itself with its kith and kin. So in order to retain one known word a number of less known and unknown words and phrases have to be forced down into our vocabulary. Their number is so large that it would easily drown and sweep away our language by its flood magnitude.

The Draft has to be studied carefully, word by word, phrase by phrase. The vocabulary is essential for understanding the exact significance and correlation.

THE INDIAN CONSTITUTION

By Dr. RAGHU VIRA,
Member, Constituent Assembly of India.

It is a document which is the harbinger of a new age. Thereby we shall enact and give unto ourselves sovereignty and independence. We have taken off slavery of centuries and are trying to breathe the air of freedom.

Our task has consisted in providing a terminology and phraseology for Law and Constitution. We believe that we have attained a success in our work which has given us satisfaction and which shall be the foundation of all future work in this sphere. Our approach to the problem of presenting the most complicated modern ideas into an Indian medium has been guided by the following canons. Under these canons lie different points of view, such as constitutional and linguistic. We have satisfied ourselves that the medium which we have devised and perfected is in consonance with the genius of our Indian languages. Not only shall it satisfy the needs of Hindi, the language of this draft, but also every other language prevalent today in the Indian Union.

The first consideration, which presented itself before us, was of finding out of proper words which should present the finest shades of English, legal, political, economic and other terms used in the Draft Constitution. Although the major language of India has been Hindi yet at no moment did we lose sight of other languages of Northern and Southern India. We have stabilized, standardized, specialized and also devised a few thousand terms to cover the needs of the Constitution. The back-ground, however, is very vast and consists of over a lac of words in different domains of literature and science so that our terminology is in consonance with the rest. With great patience we have looked into the usage in our provincial languages and selected out of them what was most serviceable and widely used. My friend Prof. Bal Krishna has called it the democratization of language.

Because so far our languages had never been used for any other purpose than general literature. Therefore, they were deficient in definitness of *nuance*. It has taken us hours and weeks to consider them and provide for them. For example, motion and resolution are different things but in Hindi we had always been using one word 'PRASTAVA' for them. Similarly order, notification, ordinance, and a score of similar words have so far been translated by the word 'ADESH'. We have been able to find suitable equivalent for every one of the shades. Those who are in need should wait for my forthcoming Dictionary.

While administrating to the needs of Hindi and other languages like Bengali, Oriya, Assamese, Gujerati, Marathi in the North we have also kept in view other Indian languages particularly Telugu, Kannada and Malayalam.

The only way of finding a common terminology for the languages mentioned above was to have recourse to Sanskrit verbal roots, prefixes and suffixes. The richness of Sanskrit, its intelligibility and transparency are unparalelled among the languages of the world. I have had occasion to peep into different linguistic systems and I am glad to announce to you that Sanskrit remains at the top. With our coming to freedom Sanskrit will be a mighty weapon for forging all our linguistic needs for the present as well as for generations to come. It is not a mere statement that I am making. I have experimented and worked for the last 17 years in the domain of many a science and I have found Sanskrit a virtual Kamadhenu. Sanskrit forms the bond between the North and the South, between our past, present and the future.

We have considered carefully the claims of Hindustani, that is, a mixture of Hindi and Urdu, which ultimately resolves itself into a mixture of Sanskrit and Perso-Arabic words. It has not so far been found workable in literature and certainly not in the domain of exact and elegant thought. A hybrid in the biological world is incapable of further reproduction. That is ture to a great extent in language. Politically, we find that Hindustani is not the language of any provincial unit from East Punjab eastwards or southwards. But above all we have to find the greatest common measure of words and phrases between Hindi and Malayalam, Bengali and Telugu, Gujerati and Oriya, Marathi and Assamese. This Hindustani definitely cannot subserve. Hindustani can serve Urdu and nothing else.

In the Hindi Draft, that is already in the market, you will find, here and there, words and phrases which you have never met before. With regard to them your attitude has to be that of a learner, a receiver and not that of a typical Anglicized Indian. To develop our language, we have to use new words. And to understand and get accustomed to new words, we have to have a loving receptive attitude towards them. Any other attitude would not do. There are friends who believe that English terminology should have been borrowed whole-sale into our Draft. We tried it and found that it created new problems. The biggest problem among these is that

(Cont. on page 12)

FOR
EVERY KIND OF
ICE CREAM
VISIT
INDIANA

Indian News Chronicle

WEDNESDAY, MAY 18, 1949

CONSTITUTION-MAKING

The debate on the Commonwealth decision with which the Constituent Assembly has begun what will be most probably its concluding session has interest not because there is any likelihood of its being decisively challenged. Its ratification is taken for granted even by its critics. The only significance of the debate lies in the expression which it gives to the under-current of scepticism even in a House dominated by Congressmen as to whether any close association between nations is possible when there are wide disparities of aims between some of them on basic racial and colonial issues and as to whether it will be possible for India to steer clear of the two Power blocs after her exclusive relationship with a group in which all the rest belong to one bloc. The Prime Minister was not probably able to allay the fears of all his critics but he did succeed in answering effectively at least those who thought that disputes between Commonwealth countries should be settled through some Commonwealth machinery. "It would have been a dangerous thing for us to bring the South African issue within the purview of the Commonwealth," he rightly told them, "because then that very thing to which you and I object might have taken place, i.e. the Commonwealth would have been considered some kind of a superior body which judges and which sometimes acts as a tribunal or in a sense supervises the activities of its member nations." The cure in that case would have been worse than the disease.

The Commonwealth decision is in a case a fait accompli and one can only wait for the verdict of history which may come much sooner than either the Government or their critics imagine. The main interest of the session will, therefore, centre round the Draft Constitution itself four-fifths of which still remains to be passed. So far as the public are concerned, the only criterion by which they can rationally judge the constitution is how far it not only ensures their ordered political and economic progress but also guarantees their basic rights and liberties. Already they are sorely disappointed over the Fundamental Rights clauses adopted at the last session inasmuch as they do not guarantee even the liberty of the person and do not protect the citizen against arbitrary arrest and detention without trial. They leave loopholes for any Government, whether in a province or at the Centre, to pass such undemocratic legislation as the Public Security Acts now in force in many provinces. It is, therefore, with anxiety that the public would wait for the debate on the clauses dealing with emergency powers particularly the clause which lays down that if at any time the Governor of a State is satisfied that it is not possible to carry on the government of the State in accordance with the provisions of this Constitution, he may by proclamation declare that his functions shall to such extent as may be specified in the proclamation, be exercised by him in his discretion. It is obvious that provision has to be made for some emergency powers to prevent an administrative break-down but these provisions would be much more acceptable if the Governors were directly elected by the entire enfranchised population of the State concerned. In any case there should be a definite provision for the holding of a general election in the State concerned as soon as a Governor assumes such wide powers to ensure that the period of emergency is as brief as possible.

Since Dr. Ambedkar moved the Draft Constitution at the last session and pleaded that the States and States Unions come up to the level of the provinces so that there was no disparity in the constituent units of the Union, the differences between the provinces and the States Unions have been considerably narrowed down. Only the States and States Unions, unlike the provinces, would have no elected heads. There is no reason, however, why they cannot be brought to the level of the provinces in this matter too. To do this, in any case, would involve a minor change compared to the transformation the States have already gone through.

A. B. patrikan 19-5-49

Discussion On Draft Constitution Resumed

Constituent Assembly Adopts Five Articles On Wednesday

NEW DELHI, May 18.

The Constituent Assembly, which began discussion on the draft constitution to-day, made a good start by adopting five articles.

The articles adopted related to duration of houses of Parliament, age limit of members of the Parliament, sessions of Parliament, its prorogation and dissolution etc.

As regards the age limit of members of Parliament the Assembly decided that a person should not be qualified to be chosen to fill a seat "unless he is, in the case of a seat in the Council of States, not less than 30 years of age and, in the case of a seat in the House of People, not less than 25 years of age."

The Constituent Assembly resumed discussion on the draft constitution and took up clause 68 relating to duration of the Houses of Parliament.

Two amendments were moved to the article, one by Dr. Ambedkar himself and the other by Prof. K. T. Shah. Dr. Ambedkar's amendment sought to vest the power of extending the life of the Parliament in case of emergency in the Parliament and not in the President as originally proposed.

Prof. K. T. Shah through his amendment suggested that the people's House elected after the proclamation of emergency has ceased to co-operate, should hold office only for the balance of the period for which it would have been elected, if the dissolution had taken place in the normal course.

The same principle, he added, should apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term.

Prof. Shah opined that any parliament elected after or immediately after an emergency was likely to be influenced by the very fact of the emergency. Such parliament if it were given the normal life, might not represent and reflect the popular sentiment and the issues facing the country. Therefore the life of such parliament should not be for the full term but for the balance of the normal period.

Dr. B. R. Ambedkar moved an amendment to article 67 which was passed at the last session of the Assembly. The amendment related to appointment of experts in connection with a bill. The amendment in the first part suggested that the President might nominate persons not exceeding three "to assist and advise the Houses of Parliament in connection with any particular bill introduced or to be introduced in either House of Parliament." The second part of the

(Continued on Page 8, Col. 2)

Consembly Adopts Fi On Wednesday

(Continued from Page 1)

amendment said that the persons so nominated should have the right to speak and to take part in the proceedings of either House and any joint sitting of the Houses and any committee of Parliament of which they might be members, but should not be entitled to vote nor should they be entitled to speak in or to take part in the proceedings of the Parliament or any committee of Parliament in relation to any other matter.

Explaining the necessity for this amendment Dr. Ambedkar said originally the Drafting Committee adopted the Irish system of nominating 15 persons to the Upper Chamber out of a panel constituted by various interests, such as, science, literature, agriculture, engineering and so on. But when Sir B. N. Rao went to Ireland he enquired from de Valera and other members of the Irish Government how this system had been functioning and he was told that the panel system had completely failed. The Drafting Committee, therefore, dropped the provision and proposed a simple measure to endow the President with the authority to nominate 12 persons to the Upper Chamber representing special knowledge or practical experience in science, literature and social services. The matter was again discussed by the Union Constitution Committee and the Committee proposed that the total number of nomination which was originally restricted to 15 should be divided into 2 clauses, namely, there should be a set of people nominated as full members of the House and 3 other persons should be nominated as experts "to assist and advise the Parliament in the matter of any particular measure that the Parliament may be considering at the moment."

The first part of the recommendation had already been incorporated in article 67 and it was to give effect to the second part of the recommendation of the Union Constitution Committee that this amendment was proposed. He pointed out that the functions of the members nominated, thereunder, were limited and the tenure of their offices would be only for the duration of the discussion of particular measure for which they would be nominated. Moreover, they were only entitled to take part in the debate and not to vote. The addition of these 3 members would not, therefore, affect the voting strength of the House. A similar provision, he said, was also included in 1949 Act. He said it would do lot of good if such a provision was introduced in the Constitution.

Discussion on the amendment was, however, postponed till a later date as Pandit Thakurdas Bhargava and one or two other members pointed out that no notice of the amendment was given and they were not prepared to discuss it at this stage.

The House adopted two amendments moved by Shrimati Durga Bai to the Constituent Assembly rules.

The amendments sought that the existing rules of the Constituent Assembly should also be extended to Indian States.

DR. AMBEDKAR REPLIES TO AMENDMENT

Dr. Ambedkar replying to the general observations, said that while he also sympathised with Prof. Shah as regards the spirit of his amendment, various difficulties would arise in the practical side of it. It would be unfair to inflict the enormous cost of election on the Government and the people for short terms of emergency. Election usually involved tremendous cost and it would not be proper to impose such cost on the Government and the people too frequently.

Further, Dr. Ambedkar pointed out that if an election took place immediately after the dissolution of the Parliament, the minds of the people were bound to be a bit unhinged and a fair representation could not be expected. In these circumstances, Dr. Ambedkar said, Prof. Shah's amendment would not be acceptable.

Dr. Ambedkar's amendment was carried while Prof. Shah's amendment was rejected. Article 68 of the Draft Constitution was then carried with proper modification was sought by Dr. Ambedkar's amendment.

PARLIAMENTARIANS' AGE

Dr. Ambedkar then moved that a new article be inserted after Article 68. The new article provided that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India; and in the case of a seat in the Council Of States, not less than 35 years of age and in the case of a seat in the House Of the People, not less than 25 years of age and possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.

Dr. Ambedkar said that provision of these essential qualifications was necessary for a candidate for the upper and lower houses of Parliament. The general rule was that a person who was a voter was entitled to stand for election to a seat in the houses of Parliament. But in addition to that the candidate should satisfy the special qualifications provided for in Dr. Ambedkar's amendment.

Some of Mr. Nasiruddin's amendments to the new article were agreed to be referred to the Drafting Committee by the house at the suggestion of the President, as they were more of a drafting nature.

MAKE IT 30

Srimati Durga Bai moved an amendment which sought to reduce the age limit of a person standing for election to the Council of States from 35 as provided for in Dr. Ambedkar's new article to 30. She said that it had been widely recognised now all over that wisdom did not depend on age. In the new set up of things, it was essential for India's young men and women to be given an earlier change of shouldering responsibilities

PRESIDENT'S VIEWS

Before putting the amendment and the new clause to vote, Dr. Rajendra Prasad, the President, said that a high degree of qualification was necessary for the judicial services and also for those who assist in bringing justice to the people. But it was anomalous to suggest that while a high degree of qualification was necessary for preservers of law, no extra qualification should be necessary for those who made law. This remark of his, Dr. Prasad, said should not have any deflection on the voting. After the mover has accepted the amendment of Shrimati Durga Bai, the House passed the new amended clause without any division.

FREQUENCY OF SESSION

Dr. Ambedkar then moved Article 69 which made provisions for the Houses of Parliament to meet at least twice every year. The article also empowered the President to summon the House at such time and place as he deemed fit and to prorogue or dissolve the House Of The People.

Prof. K. T. Shah by an amendment wanted that the House of Parliament should meet at least once every year at the beginning thereof and the periodical difference between two sessions should not be more than three months. This, he said, would enable the Houses to meet more often than was provided for and would go a long way in enabling the members of the Parliament to voice the grievances of the people. Ordinarily, more than half the time of the House was taken by the ministerial bench in moving their demands for grants, bills, and replying to the debate. thus leaving a short time for the members to do full justice to their assignments.

Mr. K. V. Kamath's amendment sought that the Parliament should be summoned at least thrice instead of twice as provided in the draft. This provision, he said, had been copied bodily from the Government of India Act without any consideration as to what additional duty and responsibility the Parliament of free India would have. Pointing out that the American Congress and the British Parliament met eight or nine months in a year, he asked why should, that system not be followed in India. He hoped that Dr. Ambedkar would realise it and accept the amendment so that the Parliament could discharge its responsibility and duties to the people and the country.

Prof. K. T. Shah moved four more amendments to the article.

Dr. Ambedkar said that he regretted that he could not accept any of the amendments that had been moved by Prof. Shah or by Mr. Kamath. The amendments moved by Prof. Shah raised certain points. The whole substance of Prof. Shah' samendment, Dr. Ambedkar said, was that the interval between any two sessions of the Parliament should not exceed three months. The same had been the substance of Mr. Kamath's amendment.

PARLIAMENT THEN & NOW

It seemed to Dr. Ambedkar that neither Prof. Shah nor Mr. Kamath appeared to have understood the reasons laid down in the original provision relating to the interval between two sessions of the Parliament in the Government of India Act, 1935. He thought that both Prof. Shah and Mr Kamath would realise that the political atmosphere that prevailed at the time of passing the Government of India Act, 1935, was totally different from the atmosphere which prevails now. In fact before the passing of the Government of India Act, the legislature was summoned primarily for the purpose of collecting revenue. In other words it met only for budget. The executive had no occasion to meet the legislature as regard the question of day to day administration or to exert any influence over the legislature for getting enacted certain social reforms.

As a matter of fact, Dr. Ambedkar said, he had an instance where one provincial legislature met only for 18 days and that too was for the purpose of collecting revenue.

It was felt, Dr. Ambedkar continued, that legislature should meet more often, not simply for the purpose of revenue collection, but also to exert its influence in the day to day administration of the country. Then alone it would be a truly representative body of the people. "I do not think that any executive would hereafter be capable of such a callous conduct."

That was why the original provision relating to sessions of the legislature was introduced in the Government of India Act. Dr. Ambedkar thinking that it was good urged that they also should incorporate it in their constitution.

IF PRESIDENT FAILS

Referring to other amendments of Prof. Shah, which sought to invest the Speaker of the lower House or the Chairman of the Upper House with power to summon the legislature in case the President failed to summon it within the period of three months, Dr. Ambedkar said that no case out of Prof. Shah's doubt that the President might fail to summon the House. In that case, Dr. Ambedkar said that they had within the constitution other methods of dealing with the situation.

"It seems to me, "Dr. Ambedkar said, "that Prof. Shah has entirely misunderstood the whole position. I do not think any President would normally fail to summon the Parliament. Even if he does so we have the right of impeachment of the President for neglect of duty."

Further, Dr. Ambedkar said that the dissolution of Parliament had to be effected by the President under the advice of the Prime Minister. He could not understand why Prof. Shah wanted the President to obtain in writing the reasons for such dissolution from the Prime Minister. He did not know what difference it made between the oral advice tendered by the Prime Minister for dissolution of Parliament and the entry of reasons for his advice to this effect in a document.

They had other methods of assessing the feeling of the house.

Again under parliamentary convention the King of England was not necessarily obliged to accept the advice of the Prime Minister of England to dissolve the Parliament, unless he had known the rulings of the house. The King could call upon the leader of the opposition or any other member of Parliament to take up the reins of administration without dissolving the house.

Similarly the President of the Indian Union could respect that parliamentary convention. There was no need for him to obtain the reasons for dissolution of Parliament from the Prime Minister. There were other methods open to him to understand whether the Prime Minister's oral advice in respect of dissolution of the house was bonafide or was for some party purposes, he concluded.

Article 69 was adopted without any amendment.

By passing Article 70, the house empowered the President of the republic to send messages to either house of Parliament whether with respect to a bill then pending in Parliament or otherwise and a house where such message was sent should consider any matter required by the message. Article 71, which was also passed, made it obligatory on the part of the President to address both houses of Parliament assembled together with a view to informing them to cause of its summons.

The Assembly thereafter adopted Article 72 providing that every Minister and the Attorney General of India shall have the right to speak in and take part in the proceedings of either house, any joint sitting of the houses and any committee of Parliament of which he may be named a member, but shall not be entitled to vote.

Prof. K. T. Shah sought to confer that right only to such Ministers and Attorney-General who were elected to the Parliament.

Dr. Ambedkar replying said that normally a member of the lower house was not entitled to take part in the proceedings of the upper house. But a Minister, who was a member of the lower house or the upper house, might have to go to the other house of which he was not a member to pilot a bill successfully. If his powers were restricted he would be deprived of his right to pilot his bill properly in the other house. The Attorney-General also might similarly have the necessity of going to the house of which he was not a member.

The amendment was lost.

The Assembly adjourned till to-morrow.

—(U.P.)

The Hindustan Times

MONDAY, MAY 16, 1949.

THE REAL TARGET

The Constituent Assembly which resumes consideration of the Draft Constitution today is expected to set before itself August 15 as the target date for the inauguration of the Indian Republic. And since the authorities must have at least a fortnight to make the necessary administrative adjustments, the Assembly has only about 10 weeks to pass more than 250 articles of the constitution, with eight schedules. The fixing of a target makes for progress and in addition both the Assembly and the authorities are acting under the stimulus of the attacks from not disinterested critics, that both are deliberately delaying progress, the one to hang on to power and the other, presumably, to prolong its life unduly. There are, no doubt, factors which must stimulate progress, the most important of them being the desire to proclaim the Republic on the second anniversary of Indian Independence. Articles relating to Fundamental Rights, Directive Principles of State Policy, the constitution of the Federal Executive, including the President and the Council of Ministers, and the composition of Parliament have already been passed. Settlement by agreement has been reached on the difficult issue of minority rights. The process of integration and democratization of States has proceeded far enough to make the task of the Constituent Assembly in making same or similar provisions for the provinces and States an easy one. Decision has been reached on the relation of the Indian Republic with the Commonwealth and, though there has been criticism of the Prime Minister's action in agreeing to the London declaration, there can be no doubt that the decision will be ratified by the Constituent Assembly.

There are, however, difficult issues which have yet to be settled. The preamble and the name of the Union are yet to be dealt with. The ticklish issue of citizenship and the more complicated problem of property, which were postponed at the last session, will come up for discussion now. Though the trend of general opinion is easily discernible, a decision has yet to be taken on the language question, as well as the linguistic provinces issue. The Assembly will also have to make its choice of the National Anthem. Apart from these questions, which have agitated a considerable body of public opinion in the country, there are intricate constitutional problems which, unfortunately, have not so far received the amount of consideration they deserve because of their intrinsic importance. The recent unfortunate experiences in some provinces make it necessary for the Assembly to consider whether any modifications should be introduced in the Draft Constitution to give provincial Governments the stability which they seem to lack at present. Recent events have also stressed the importance of ensuring the absolute independence and integrity of the Judiciary. Public criticism of the methods adopted by Governmental Departments in making appointments and getting round or ignoring the recommendations of the Public Service Commissions seem to indicate the need for strengthening these Commissions and widening their powers in order to prevent possible executive interference. In countries like the United Kingdom, the existing relation between Ministers and the Services is the result of historical developments and conventions which are well understood and which make both for efficiency and rectitude. Since such conventions either do not exist or are not understood in this country, it will be worth while for the Constituent Assembly to investigate the possibility of making provisions, like granting right of audience to permanent heads of Departments with the Head of the State, in order to prevent the Services getting contaminated by the intrigues of political parties and groups. There are the emergency provisions which must be carefully scrutinized both with a view to the Government being carried on under all circumstances and the possibility of their autocratic exercise by a not democratically inclined Head of the State. And last of all come provisions for amending the constitution which must at the same time be made difficult enough to give stability to the constitution but flexible enough to enable changes necessitated by circumstances being incorporated in the constitution easily. To hustle discussion on such issues because of our anxiety to make quick progress will be no service to the country. In enacting the constitution we are legislating not for the present but for as long ahead one can foresee. Governments may be changed easily, but not constitutions. The greater the thought bestowed on it, the surer will it stand the test of time. The real target should be not a particular date but the essential soundness of the constitution itself.

THE STATESMAN

DELHI, May 16, 1949

INDIA'S MINORITIES

India's Constituent Assembly, about to convene for the closing stages of its task, was last week presented with a momentous decision by its Minorities Advisory Committee. Under the joint electorate system already resolved on there is to be no reservation of seats for religious minorities except for the Scheduled Castes, a term now extended to include corresponding Sikh classes in East Punjab; and reservation even in this case is guaranteed only for 10 years. If, as is probable, the Assembly accepts this recommendation, which somewhat surprisingly reverses earlier decisions both of itself and the Committee, some degree of finality, if not finality itself, will have been reached in a controversy that has raged practically throughout the present century. Separate electorates, joint electorates, reservation, weightage—the political arena has long resounded with the strife engendered by these terms, the outward symbols of much of the political history of the later British Indian period. After due consideration, the Minorities Advisory Committee has at one meeting sought to end all dispute by a resolution in keeping with the broad democratic and secular objectives of the new Constitution. Conditions since its earlier and contrasting recommendations in 1947 have, it says, vastly changed; it does not specify how.

Whatever justification special electoral privileges for minorities may have had, they are in general repugnant to many people in post-partition India as upholding or fostering communalism. The commendable aim now is to remove artificial barriers of all kinds between sections of the population. Even so, dissent may for a while not yet be silenced, for reasons that deserve patient, sympathetic and realistic consideration. To insist, on theoretical grounds, that the minorities "ought" to be satisfied with the decision now reached would be superficial and unwise; statesmanship requires that they be so well treated in practice by their fellow citizens as to have no legitimate cause for complaint. Grievances of substance, in regard to Service appointments for example, continue to be voiced.

The argument for safeguards under the previous régime was that only if the minorities' own men were in positions of authority, or had easy and influential access to the holders, would grievances be properly remedied. Applied, this principle tended understandably enough to keep the communities apart. But if separatism is truly to go, a heavy duty lies on the majority to ensure that the latent misgivings and diffidence from which it sprang go too. By suitable conventions the minorities, wherever necessary, should in any case be ensured fair treatment under the new electoral dispensation. Spontaneous active generosity rather than strict fairness would, however, be even more rewarding. In so far as natural revolution aligns political parties on new—especially economic—issues, the removal of obstinate deep-rooted past separatisms would thereby be hastened. In the transitional period, particularly, it is important to ensure that joint electorates without reservations genuinely yield the all-round benefits that their sponsors have long foretold.

A boldly magnanimous and trustful attitude towards one afflicted community, in especial, the Sikhs, is, for reasons often advanced in these columns, very necessary in the Indian Union's long term interests. In large part, uprooted by partition, with consequent bitter recent memories of loss and suffering; strategically placed on the country's north-western border; by their skill, industry, and fortitude a splendid asset to India already and potentially a still greater one, Sikhs feel much need of reassurance about their place in the Indian polity. One of their demands, inclusion of certain Sikh classes in the list of Scheduled Castes, was wisely agreed to by the Advisory Committee. The way was thus cleared for the decision not to reduce reservation of seats, and it seems to have been accepted by influential sections of Sikh opinion. It is true that another and important section has hitherto stood vigorously for separate electorates. Nevertheless, uncertainty over the Constitution's bearing on two important matters affecting the Sikhs has at last been clarified, and it may thus be easier to deal with other perplexing points about which the community has been much exercised. It must be recognized, however, that in the new circumstances, so suddenly evolved, Sikh opinion as a whole has yet to crystallize.

Further light on the Congress High Command's views will presumably be available in the forthcoming Constituent Assembly debates. That some aspects of a very controversial field should be illuminated and others left in obscurity is undesirable and the Assembly will be looked to for a lead. Certain points on which Sikhs have been insistent could be adjusted by healthy conventions—the key, we believe, to much of the minority problem as a whole. It would appear that the East Punjab Ministry has hitherto not reached unanimity over two crucial items of policy, the medium of instruction and the Hindu-Sikh ratio in the Services. These, it is reported, have been referred to the Centre, which now has an opportunity of initiating the process of convention-making.

THE HINDUSTAN TIMES, THURSDAY, MAY 19, 1949.

C.A. ADOPTS SIX NEW CLAUSES OF CONSTITUTION

AGE-LIMIT FOR MEMBERS OF UPPER HOUSE

DURATION OF PARLIAMENT SESSIONS FIXED

Six clauses were adopted yesterday by the Constituent Assembly, which settled down to the strenuous business of clause-by-clause discussion of the republican Constitution.

The House had already adopted in previous sessions 67 out of 315 clauses and eight schedules.

One of the provisions accepted yesterday fixed the minimum age of candidates to the Council of States at 30. Dr B. R. Ambedkar, Law Minister, had suggested 35 but later accepted an amendment moved by Smt. Durga Bai reducing the age to 30.

An article seeking to empower the President to nominate three experts to assist Parliament on any particular Bill, but without the right to vote, was deferred till today.

Other clauses adopted by the House related to duration of the Houses of Parliament, right of the Union President to address and send messages to Parliament and the right of Ministers and the Attorney-General to participate in the proceedings of Parliament without being entitled to vote.

The Assembly also passed a Bill to enable the Governor-General to end European representation in the Coorg Legislative Council and to empower the Centre to pass legislation for the inter-provincial transfer of detenus.

In August 1947, the Government of India Act was so adapted as to eliminate special representation for Europeans in legislative assemblies and councils but the fact that there was special representation for Europeans in the Coorg Legislative Council was overlooked at the time. The present Bill will enable the Government to cure this anomaly.

The Bill was piloted by Mr N. V. Gadgil, Minister for Works, Mines and Power, on behalf of Sardar Patel, Home Minister.

Before the Constituent Assembly proceeded with the consideration of the articles of the draft constitution, Seth Govind Das referred to a speech by Dr Rajendra Prasad, President of the Assembly, suggesting that the constitution of Free India should be drafted in her national language and not in English. He said that he had toured the country and the consensus of opinion was that the constitution should be in Hindi. He, therefore, suggested that along with the English draft, a Hindi draft of the constitution should also be taken up and simultaneously adopted.

Hindi Draft

Dr Prasad said that in pursuance of his statement he had appointed committees to prepare translations of the draft which was made originally in English. Accordingly, three drafts, one in Hindi, one in Hindustani and the third in Urdu, were printed, but these were not acceptable to a large body of the members. The Steering Committee had, therefore, requested the President to appoint a committee of experts to prepare the translations which would be as accurate as possible and at the same time intelligible to the public at large. The Committee was now engaged in the task.

"It is in keeping with our national dignity," said the President, "that we should pass the constitution in original in our national language. As soon as the translations of the constitution are ready, I will place the matter before the House." (Cheers.)

Mr Thirumal Rao: In the event of the Committee evolving a satisfactory translation, is it proposed to give up the adoption of the constitution in English?

Dr Prasad: I do not think so. Because the original was prepared in the English language it has to be adopted. We will also adopt the constitution in our own language, if that could be satisfactorily prepared.

The President added that it was open to any member to move an amendment to the Hindi draft so far as the language was concerned, but in regard to substance no such amendment was permissible.

The House then took up a new article moved by Dr Ambedkar in regard to nomination of experts in connection with a Bill.

Panel System

The Article seeks to empower the President to nominate persons not exceeding three in number to assist the Houses of Parliament in connection with any particular Bill. Those members would have the right to speak but not to vote.

Moving the Article, Dr Ambedkar pointed out that the Union Constitution Committee originally suggested adoption of the Irish system of nomination of 15 members to the Upper Chamber. Mr B. N. Rao, who had gone to Eire and had discussions with Mr de Valera as to how far this system had worked, was told that the panel system had completely failed. The Drafting Committee had thereupon decided to drop the provision, but the matter was reconsidered by the Union Constitution Committee. The Committee proposed that the total number of nominations, which were originally restricted to 15, should be divided into two classes, namely, there should be a set of people nominated as full members of the House and they should have special knowledge in arts, science and literature and three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular Bill.

The Constituent Assembly had already adopted Article 67 covering the first suggestion. The new Article sought to give effect to the second part of the recommendation. He pointed out that the Article limited the functions of the nominated members and their terms and duration would be co-terminus with the proceedings of the particular Bill. Similar provisions were also contained in the Government of India (1919), Act.

Dissolution Of Parliament

Pandit Thakurdas Bhargava said that the Article was not circulated to the members of the House and they had no time to study it.

The President suggested that consideration of the Article might be deferred till today.

The House then adopted Article 68 of the constitution moved by Dr Ambedkar. The Article lays down that the Council of States shall not be subject to dissolution but that one-third of the members shall retire on the expiration of every second year. Under the Article, the Lower House will continue for five years. It also lays down that the life of the House shall be extended for a period of not exceeding one year at a time and not for more than six months after the proclamation of an emergency has ceased to operate.

Prof. K. T. Shah moved an amendment that after the proclamation had ceased to operate the life of the House should be only for the balance of the period for which it would have been elected if the dissolution had taken place in the normal course of the session. The amendment said that the same provision should apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the balance of the normal term.

Prof. Shah said in support of his amendment that a Parliament elected after the emergency would be influenced very much by the fact of that emergency.

The amendment was lost.

Members' Qualifications

Dr Ambedkar moved a new article —Article 68-A, prescribing qualifications for a person to fill a seat in the Council of States. The necessary qualifications are that he must be a citizen of India, must be not less than 35 years of age for a seat in the Council of States, and not less than 25 years of age for a seat in the House of the People and must possess such other qualifications as may be prescribed in this behalf by or under the Law made by Parliament.

Dr Ambedkar said it was necessary to introduce this article because a similar article had been passed by the provincial legislatures. He hoped that the House would agree that it was desirable that every candidate should possess some qualifications other than those entitling him merely to vote. If these additional qualifications were accepted, the House would be able to secure proper persons in the legislature.

Smt. Durga Bai moved an amendment, which sought to fix the age of the candidate at 30 for a seat in the Council of States. The amendment was accepted.

Mr H. V. Kamath supported Smt. Durga Bai's amendment. He, however, pointed out that the House had already agreed to fix the age-limit of the Vice-President, who would preside over the Upper House, at 35. This would mean that a member of the Upper House who was below 35 would be "unsuitable" for the purpose of election as Vice-President. This anomaly was unfortunate.

Dr Prasad, intervening, said this matter might be considered by the Drafting Committee if it was so inclined.

Amendment Opposed

Prof Shibban Lal Saksena said he was not happy over Dr Ambedkar's amendment. Pitt became Prime Minister of England when he was less than 25, Shankaracharya became world teacher at 32 and Alexander conquered the world at 32. He felt that any person who was a voter should be permitted to stand for election. He also did not like the idea of future Parliaments deciding the qualifications of candidates. This provision might be abused to prevent the Opposition party from coming to power.

Mr Tajamul Hussain said that any person who had attained majority should be entitled to stand for the Upper House. He supported Smt. Durga Bai's amendment. Dr Ambedkar's amendment went against the principle that a voter was entitled to become a candidate.

Mr Mahboob Ali Baig said Dr Ambedkar's amendment was dangerous. A reactionary or capitalist Parliament might lay down conditions to restrict the number of persons who could stand for election.

Mr T. T. Krishnamachari said the minimum age of the Vice-President had been fixed at 35 because the President could not be below 35 and in the event of a vacancy, the presidential office would have to be filled by the Vice-President. Hence there was no anomaly in fixing the minimum age of a member of the Upper House at 30 and that of the Vice-President at 35. The age in both cases had been prescribed for different reasons. He did not see why anyone should object to the qualifications of a voter being different from those of a candidate.

Dr Ambedkar accepted Smt. Durga Bai's amendment but pointed out that while this amendment would apply to the Upper House at the Centre, the minimum age of candidates for the Upper Houses in the provinces had already been fixed at 35. It would not matter very much if this distinction remained but it was open to the House, if it wished, to make the age uniform.

Dr Prasad said that what struck him as something very curious was that, in this country, judges and those who were expected to assist judges had to possess very high qualifications while members of the Constituent Assembly were of the opinion that the men who made the law needed no qualifications at all.

"If we take the extreme case," he said, "the legislature may consist of persons without any qualifications at all and they may pass something which is nonsensical and then the wisdom of all the lawyers and all the judges will be required to interpret that law. It seems to me to be an anomaly but in this age we have to put up with that kind of anomaly. I for one, though I do not like it, will have to put up with it."

The House then took up Article 69, relating to the summoning of the sessions of Parliament, prorogation and dissolution. It provides that Parliament shall be summoned to meet twice at least in every year and six months shall not intervene between their sittings. It also empowers the President to summon and prorogue both Houses and dissolve the House of the People.

Prof. K. T. Shah moved four amendments to the effect that not more than three months should intervene between the sessions of Parliament. Their sittings should be deemed continuous throughout the year notwithstanding interruption due to holiday, or adjournment. The Speaker or the Chairman of the Houses, as the case might be, should have the power to summon the House in case the President failed to summon Parliament.

Mr Kamath moved an amendment suggesting that there should be at least three sessions of Parliament every year.

Prof. Shah contended that adequate time had not been given to the representatives of the people to discharge their duties in Parliament. Like the House of Parliament in Britain, the Indian Parliament should sit continuously throughout the year, if parliamentary responsibilities were to be fully discharged. As regards conferring powers on the Speaker or the Chairman to convene the Houses of Parliament, Prof. Shah argued that there might be occasions when the President would, in violation of the Constitution, take the law into his hand and refuse to summon the legislature. The Constitution must provide for such a contingency.

Commending his amendment to the House, Mr Kamath said that in regard to this particular article the Government of India Act was copied to a letter, without consideration of what additional duties or responsibilities had been devolved on Free India's Parliament.

The necessity of Parliament meeting more often and for a longer period had been recognized by all. He pointed out that during the Budget session of the Dominion Parliament supplementary demands amounting to several crores had to be passed within three hours. Though the minimum number of sessions had been prescribed he felt that the minimum always tended to become the maximum.

Mr R. K. Sidhwa, Mr Tajamul Husain and Prof. Shibanlal Saksena during the general discussion supported Mr Kamath's amendment. Mr Sidhwa said Parliament should sit continuously for the whole year with a break of a month or two.

Ambedkar's Reply

Dr Ambedkar, replying to the debate, said he regretted he could not accept any of the amendments. He pointed out that the political atmosphere was totally different now from the one which was prevalent during 1935. Then the executives used to shun the legislature, which was summoned primarily for the purpose of collecting revenues and obtaining sanction of the legislature for their financial proposals and appropriation of the revenue. It would be a travesty of a popular Government to summon the legislature merely for the purpose of getting revenue and then dismiss it. He did not think that the executive now would be so callous.

The article, which had prescribed the minimum number of sessions, did not prevent the legislature being summoned more often than what had been provided for. His fear was that the sessions of Parliament would be so frequent and lengthy that the members would probably get tired of the legislature. Further the Government were responsible to the people not merely for the purpose of carrying on good administration but to give effect to legislative programme of its party. For these reasons there was no occasion to fear that the executive would not summon sessions more than twice a year.

Replying to the suggestion that the President might refuse to summon the legislature and that provision should be made to meet that contingency, Dr Ambedkar said that he failed to understand why the President should fail to accept a Prime Minister's proposal to summon the legislature. Should the President, for no valid reason, refuse to summon legislature in accordance with the Prime Minister's advice, then there was a remedy in the Constitution to replace such a President, namely, the right of impeachment.

Violation Of Constitution

Such a refusal on the part of the President to perform the obligations imposed upon him under the Constitution was undoubtedly a violation of the Constitution. In case the Speaker or the Chairman was vested with the power to summon the legislature, and in case the President for good reasons did not summon it, a difficult situation would arise. It meant the executive Government had no business which it could place before the House for transaction and the Speaker could not provide business for Parliament.

That was the only ground why the President on the advice of the Prime Minister was being empowered to summon the legislature.

Referring to the powers of the President to dissolve Parliament, Dr Ambedkar said there was no need for a document in writing stating the reasons why the Prime Minister wanted dissolution of the House. There were other ways and means for the President to test the feeling of the House and to find out whether the Prime Minister was asking for the dissolution of the House for the benefit of the party or national interest.

The House rejected all the amendments and adopted the Article.

The House adopted clauses 70, 71 and 72 relating to presidential addresses to Parliament and the right of Ministers and the Attorney-General to take part in the proceedings of Parliament without being entitled to vote.

The House adjourned till today.—A.P.I.

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Hindustan Times 19.5

C.A. GETS DOWN TO BUSINESS

ARTICLE ON AGE-LIMITS OF CANDIDATES PASSED

NEW COMMITTEE TRANSLATING DRAFT CONSTITUTION

GOVERNMENT OF INDIA ACT AMENDED

(By Our Special Correspondent)

NEW DELHI, Wednesday.—Taking less than an hour to dispose of the Bill amending the Government of India Act and amendments to the rules of procedure, the Constituent Assembly today plunged into its main business of considering the Articles of the Draft Constitution.

Six articles relating to the Central Legislature were passed. One of them empowered Parliament to extend its life in an emergency and another laid down the age-limit of 25 for Lower House and 30 for Upper House for candidates standing for election.

Before the Articles were taken up, Seth Govind Das asked the President if he adhered to his statement of May 2, 1947, suggesting that the Constitution in its original form should be adopted in the national language. Dr Rajendra Prasad announced that the three translations in Hindi, Urdu and Hindustani prepared by three committees had not been found acceptable and that a new committee was engaged in preparing a fresh translation which would be intelligible to all.

The President added that he still believed that the Constitution should be passed in Hindi, and when the translation was ready, it should be passed along with the English version. Members would be free to move amendments to the Hindi draft

Detailed report on page 6

but only relating to language leaving the substance unchanged. Dr Prasad's statement was received with cheers.

The Bill amending the Government of India Act was sponsored by Mr N. V. Gadgil in the absence of Sardar Patel. Mr Ananthasayanam

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C.A. GETS TO BUSINESS

Continued from page 1, col. 1

Ayyangar and Mr Thakurdas Bhargava raised some objections, but the Bill, which seeks to eliminate European representation in the Coorg Legislative Council and to empower the Centre to transfer detenus from one province to another, was passed.

The first Article taken up was the one relating to nominations to Parliament. It was an additional Article giving powers to the President to nominate three experts to Parliament to assist and advise it on a particular measure. These members would have the right to participate in debates, but not the right to vote.

After Dr Ambedkar had spoken on the Article, the objection was raised that the members had not had proper notice. Consideration of the Article was accordingly postponed.

On the question of prolongation of Parliament's life, Prof. Shah moved an amendment suggesting that a new Parliament elected after an emergency should be only for the balance of the five-year period remaining after the emergency and not a full period. This view was found unacceptable.

A number of members spoke on the Article laying down the age-limit of 35 for members of the Upper House. Shrimati Durga Bai's amendment that the limit should be reduced to 30 was accepted, although speakers were generally of the view that there should be no limit at all. Dr Rajendra Prasad, however, pointed out that experienced people should be members of the legislature so that lawyers and judges would have no trouble in interpreting the laws made by them.

The other four articles related to the frequency of sessions of Parliament, its prorogation and dissolution, the President's right to address both Houses of Legislature, and the right of Ministers and the Attorney-General to attend meetings of either House of Parliament. Prof. Shah had a spate of amendments and took a lot of time in trying to convince the House of the advisability of making some obviously unnecessary changes. For instance, he suggested that there should not be an interval of more than three months between two sessions of the legislature. This view had some support, for some other members also felt that the legislature should meet as often as possible.

Dr Ambedkar in his reply was more than reassuring. In the changed conditions of today, he said, no executive could afford to ignore the legislature. There was the case of a provincial Government which called the legislature for 18 days only in a year in order to get its financial proposals sanctioned. In the new atmosphere the legislature would have to be in session for long periods in order to put through the party programme. There need, therefore, be no fear of the legislature not being summoned often enough. The article only provided the minimum of two sessions a year. In actual practice the sessions were bound to be much more frequent.

Prof. Shah had amendments to other articles also, but was not able to find support for any of them.

The proceedings today, being of a businesslike nature, created an atmosphere of dullness and before the House had been in session for no more than a couple of hours the visitors' galleries were almost empty. The members, too, were listless and one or two were seen to be having a quiet nap on their seats. The debates on the articles featured only the enthusiasts like Mr Kamath, Prof. Shibban Lal Saksena and Mr Tajamul Husain. Evidently, it was force of habit which took them to the microphone again and again. For they had hardly anything new to contribute to the discussion.

PUBLICATION OF SPEECHES IN PARLIAMENT

DR. AMBEDKAR'S PROPOSAL ACCEPTED

Five members, Prof Shibbanlal Saxena, Mr Naziruddin Ahmed, Dr Punjabrao Deshmukh, Mr Rohini Kumar Chaudhri and Pandit L. K. Maitra, pleaded unsuccessfully in the Constituent Assembly of India on Thursday for the unrestricted right of publication of speeches made in the Indian Parliament.

The House adopted the original provision, moved by Dr Ambedkar, Law Minister, that until defined by the Indian Parliament, members of Parliament in India would enjoy the same rights and privileges in this regard as members of Parliament in Britain.

Pandit Maitra said it was surprising that the same members who under the previous régime fought for the right took the opposite view today while Mr Ananthasayanam Ayyangar said that what Pandit Maitra wanted to claim was not a privilege but a licence.

The clause as adopted by the House reads: "Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

"No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

"In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the U.K. at the commencement of this constitution."

NO ADJOURNMENT

The President, Dr Rajendra Prasad, informed the House that a suggestion had been made that the House should adjourn for a day in view of the AICC meeting at Dehra Dun on Saturday and Sunday, but he did not think that the proceedings of the House should be stopped on that account He would, however, suggest that on Monday the House might meet from 5 p.m. to 8 p.m. to enable members to return from Dehra Dun and participate in the proceedings.

The House agreed to the President's suggestion.

The Assembly rejected a suggestion by Prof K. T. Shah that the State should bear the election expenses of candidates to Parliament.

Prof Shah moved an Article which said that all expenses of candidates in connexion with election to Parliament should be defrayed out of the public treasury in accordance with a scale prescribed by Parliament, provided that candidates securing less than 10% of the votes cast should not be entitled to claim such expenses.

Commending his Article to the House, Prof Shah said that one of the reasons for the failure of democracy was the heavy cost of seeking election to public bodies like Parliament. The expenses were so heavy that only parties with large party funds and individuals with large bank balances could afford to run election campaigns. As persons with considerable means of their own or who were able to influence powerful parties were not necessarily the best representatives of the people, the public treasury should meet the election expenses in order to ensure that the richer candidates did not have an unfair advantage over the poorer ones

Mr H. V. Kamath (C.P. and Berar) and Mr Tajamul Hussain (Bihar) opposed the article. Mr Hussain said that in no civilized country in the world where democracy prevailed did the State meet election expenses. Why should India, which was a poor country, introduce that practice? "Look at the number of people who will stand when they know they will not have to spend anything out of their pockets," he added.

The Article was rejected.

DISQUALIFICATION ARTICLE

After discussion, Prof Shah withdrew another Article which sought to disqualify any member of Parliament who was convicted of treason, bribery and corruption or any offence involving moral turpitude.

Opposing the article, Mr Kamath said that there was already an Article in the Draft Constitution which enabled Parliament to make laws for such disqualification.

Articles 73, 74 and 75 dealing with officers of Parliament were adopted without much discussion.

Article 73 lays down that the Vice-President of India shall be ex-officio Chairman of the Council of States, that the Deputy Chairman of the House will be chosen from among members of the House and that if the office of Deputy Chairman falls vacant, another member shall be chosen Deputy Chairman of the House.

Mr Naziruddin Ahmed wanted the words "a member" to be substituted for the words "another member," so that it might be open for the outgoing Deputy Chairman to contest the seat.

Mr Tajamul Hussain, opposing Mr Naziruddin Ahmed's amendment, said that the word "another" was most appropriate. He argued that when a Deputy Chairman had been removed, he should not be allowed to contest, when he resigned from office he would not contest and that when he died the question did not arise.

SECTION MISUNDERSTOOD

Dr Ambedkar said he could not help saying that Mr Naziruddin Ahmed's amendment was based on "utter misconception" of the section. Mr Ahmed had failed to distinguish between re-election of a person to the same office and a new election to that office. Clause 74 laid down that when the Deputy Chairman ceased to be a member of the Council of States, he should vacate office. If the word "a" was substituted, it might include such a person also.

Although six amendments had been given notice of with regard to Section 74 and three against Section 75 none of them was moved and the sections were adopted

Section 74 deals with conditions under which the Deputy Chairman of the Upper House should vacate his office, namely, when he ceased to be a member or when he resigns or when he is removed for incapacity or want of confidence by a majority of the members of the House.

Clause 75 relates to powers of the Deputy Chairman or other members of the House to perform the functions of the Chairman while that office is vacant. It also makes provision for persons chosen by the Council to act during the Chairman's absence.

Quick progress was made by the Constituent Assembly in the disposal of six more Articles relating to the appointment of the Speaker and Deputy Speaker of the House of the People, the provision for vacation and resignation and removal from their offices and power of the Deputy Speaker and other persons to perform the duties of the office of or to act as the Speaker. The House also adopted an Article providing for the salaries and allowances of the Chairman and Deputy Chairman and the Speaker and the Deputy Speaker.

Mr T. T. Krishnamachari moved two new Articles stating that the Chairman or the Deputy Chairman in regard to the Council of States, the Speaker or the Deputy Speaker in regard to the House of the People, should not preside at sittings of the House while a resolution for his removal from office was under consideration.

Mr Kamath felt that the Articles were not complete as no provision was made for the election of a person to preside over sittings specially convened for the purpose of removal of the Speaker or the Chairman.

Dr Ambedkar pointed out that there was no lacuna as was suggested by Mr Kamath, because when the Speaker or the Chairman was being "tried", the Deputy Speaker or the Deputy Chairman as the case might be, would preside. While the latter was being "tried", the Speaker or the Chairman would preside.

The House adopted the Articles.

Mr Kamath moved an amendment that the Speaker might at any time by writing under his hand addressed to the President instead of to the Deputy Speaker as was provided in the Draft Article, resign his office. Mr Kamath said that it was inappropriate for the Speaker to send in his resignation to his deputy and it was not in keeping with his high office.

Prof Shibbanlal Saxena, opposing the amendment, pointed out that Parliament should be kept independent of the President or the Executive. Dr Ambedkar said that the Article was based on the principle that a person normally should tender his resignation to those who had appointed him. In this case, it was the House that had elected the Speaker and he should tender his resignation to one who represented the House The President should have nothing to do with the House.

The Assembly wanted to make the Parliament as completely independent as possible of the Executive and the President.

Mr Kamath withdrew the amendment.

Clause 80, adopted by the House, says that save as otherwise provided in the Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes. In the case of any equality of votes, the Chairman or Speaker shall exercise a casting vote.

The House also passed Clause 81, which says that every member of either House of Parliament shall make an affirmation or oath as prescribed.

The sub-chapter regarding "disqualifications of members" containing four Articles up to Article 85 were adopted by the House after a brief discussion.

Dr Ambedkar moved an amendment stating that no person should be a member of Parliament and the Legislature of a State at the same time. The House adopted this amendment without discussion.

AMENDMENT REJECTED

The House rejected an amendment by Mr Kamath who suggested that if a member was recalled by the electors in his constituency for failure to discharge his duties properly, or if he died, his seat in Parliament should become vacant. The House also rejected an amendment by Prof Shah who wanted that no one who was unable to read or write or speak the national language of India after 10 years from the day this Constitution came into operation, should be entitled to be a candidate for or offer himself to be elected to a seat in either House of Parliament.

Article 83 stated that a person should be disqualified for being chosen as a member of either House of Parliament for holding an office of profit, being of unsound mind, insolvent, having ceased to be a citizen of India, or under acknowledgment or allegiance to a foreign State.

Prof Saxena by an amendment suggested that Parliament should not be given power to disqualify candidates. This power, he said, was liable to be abused by the party in power.

Dr P. R. Deshmukh argued that he was sure that Parliament would not act in a spirit which was not supported by the constituencies. The disqualifications that might be prescribed by them would in their very nature be likely to be of an emergent character and the hands of Parliament should not, therefore, be tied down.

It should be remembered that the party in power had the support of the people.

Prof Saxena withdrew the amendment. The House adopted the Article and also the subsequent Article providing a penalty for sitting and voting before making a declaration or when disqualified.

The House then proceeded to discuss Articles concerning the privileges and immunities of members.

Clause No 85 dealing with the privileges of members of Parliament was considered next. In Sub-Section 2 of this Article it is laid down that the privileges and immunities of the members will be those laid down by Parliament from time to time, but till that time they will be such as those enjoyed by the House of Commons.

Mr Kamath moved an amendment for the deletion of the reference to the U.K. Parliament. "Though," he said, "it might be argued that it was not derogatory to our constitution to refer to the U.K. constitution, it would certainly not add dignity to it. It would be far happier if we relied on traditions built up in the Indian Parliament."

Mr Kamath's amendment was rejected.

EXTENSION OF PRIVILEGES

The House accepted an amendment by Mr Jaspat Roy Kapoor which sought to extend to non-members of parliament, who might be on committees of Parliament, the privileges and immunities enjoyed by members as explained in Sub-Section 2 of the Article. Mr Roy said that from time to time experts would be called in by Parliament to give the benefit of their knowledge and experience. Such expert might give evidence before Parliament, and it was necessary that whatever they said must be also privileged. It was an important principle and should be accepted.

An amendment moved by Prof Shah that the Parliament should be the sole judge in all matters concerning the privileges of members and that it should have its own officers to enforce its sentences and decrees, was rejected.

Prof Saxena referred to Sub-Section 2 of the Article which laid down that no person would be liable, in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, and said it was "qualified" and not "absolute". What was said in the House should be absolutely privileged and newspapers should have full freedom to report the proceedings.

Mr Naziruddin Ahmed referred to the freedom of speech and publication and wanted that the right of members to speak in the House, provided they conformed to the rules of the House and rulings of the Speaker, should be guaranteed. It was essential to India's freedom that the Press should be entirely free and should have full liberty to publish the proceedings of the Houses of Parliament. This was now a lacuna in the constitution.

Dr Deshmukh said that the privileges of members should not be left vague. There would be no difficulty in specifying the privileges in a schedule. He also supported Prof. Saxena's argument that the proceedings of Parliament should be allowed to be fully reported in the Press, as the official reports took months to get published.

Mr Alladi Krishnaswami Iyer, dealing with the objection to the reference to the U.K. Parliament, said that the objection was sentimental. It was common knowledge that the widest privileges were exercised by members of the British Parliament and it would only be advantageous to the Indian Parliament to have them as an example. Both the Australian and Canadian Parliaments had adopted those privileges. There was nothing "infra dig" in this reference to the British Parliament as the Indian Parliament was independent and in the same position as the British Parliament.

Referring to the objection that the privileges had not been clearly defined, Mr Iyer said there was nothing to prevent the Indian Parliament from formulating its privileges. The adoption of the privileges of the British Parliament was only a temporary expediency.

When Mr Kamath raised a point whether Australia and Canada had adopted the British pattern of Parliament privilege, Article 49 of the Australian Constitution was referred to by the President, Dr Rajendra Prasad, in support of Mr Alladi's contention.

Mr Rohini Kumar Chaudhri and Pandit Maitra supported the plea for unrestricted publication of speeches made in the House. Pandit Maitra said he was surprised that the same members who under the previous régime fought hard for this right took the opposite view today. The standing orders of the House, he contended, ensured that no libellous or defamatory statements would be made in the House. Whatever the excuse, it was preposterous that something which appeared in official documents could not be published unofficially.

Mr Ayyangar, supporting the provision, said that what Pandit Maitra claimed was not a privilege but a licence. It could not be said that members of Parliament in India should possess more rights in the matter than members in England.

The House accepted the provision and adjourned till tomorrow.—AI.

Bombay Chronicle 20-5-49

Constitution-Making

The Constituent Assembly resumed on Wednesday its work of considering the Draft Constitution of India. In its previous sessions, it had disposed of ony 67 articles dealing, inter alia', with Fundamental Rights, Directive Principles of State Policy and the Powers of the Union Executive. On Wednesday it adopted six articles dealing with Parliament, one of these fixing the minimum age of candidates to the Council of States at 30 years and that for the House of the People at 25 years. It also prescribed that the candidates in either House should possess such other qualifications as might be prescribed in this behalf by or under the law made by Parliament. It was a new article made necessary by the fact that a similar one had been passed by the provincial legislatures. The discussion on the clause turned round only the age-limit for the candidates to the Council of States. The original motion by Dr. Ambedkar prescribed a minimum age of 35 years, presumably because that is the age prescribed for the Upper House in the provinces under the Draft Constitution. But as the age-limit for the Lower House is only 25 years, many in the Assembly must have thought that the limit for the Council of States need not be much higher, and Dr. Ambedkar accepted the amendment in favour of a limit of 30 years. Probably the same change will be made in the corresponding article about the provincial legislatures. The age-limits might have been slightly higher so as to make sure that our legislators have fair experience of public affairs. But it is something that the Assembly recognised the need for some age-limit above the age of majority and for such other qualifications as might be prescribed by Parliament. We share Dr. Rajendra Prasad's view that, while the judges in the country and those expected to assist them should possess very high qualifications, those who make the laws themselves should also have fairly high qualifications.

The question again cropped up in the Assembly on Wednesday in which language or languages the constitution should be adopted. Dr. Rajendra Prasad had suggested before that the Constitution should be drafted in the national language of India. He now announced that he had accordingly appointed committees to prepare translations of the draft constitution originally made in English but that the translations in Hindi, in Hindustani and in Urdu were not acceptable to many members. At the suggestion of the Steering Committee he has appointed a committee of experts to prepare fresh translations which would be both accurate and intelligible to the public at large. The position now is that the original prepared in English "has to be adopted" and when the question of the national language is settled by the Assembly the revised draft in the national language will be submitted to the House for only verbal changes, if any.

The constitution is expected to be ready by August 15 for formal adoption on the second Independence anniversary. But more than three-fouths of the work is still to be gone through, including several very knotty questions such as the national language, linguistic provinces, relations between the provinces and the Centre, safeguards for minorities, emergency powers of the Governors, separation of the Judiciary from the Executive, and amendment of the constitution. It is also certain that the adoption of the constitution in the national language will give a lot of trouble, as there are bound to be innumerable amendments, though verbal, to the draft constitution in the language. It is therefore necessary that the speeches in the Assembly should hereafter be much briefer than they have been so far. But at the same time there should be no hurry and hustle about this supremely important task of laying down a constitution for the future. The desire to finish the task by August 15 is natural but, after all, it is a matter of sentiment, and that, if necessary, should be subordinated to the need for producing the best possible constitution for the country.

CONSEMBLY ADOPT 15 ARTICLES ON THURSDAY

(Continued From Page 1)

regard to the Council of States, the Speaker or the Deputy Speaker in regard to the House of the People, should not preside at sittings of the house while a resolution for his removal from office was under consideration.

Mr. Kamath felt that the articles were not complete, as no provision was made for the election of a person to preside over a sitting specially convened for the purpose of removal of the Speaker or the Chairman.

Dr. Ambedkar pointed out that there was no lacuna as was suggested by Mr. Kamath, because when the Speaker or the Chaiman was being "tried," the Deputy Speaker or the Deputy Chairman as the case might be would preside. While the latter was being "tried," the Speaker or the Chairman would preside.

The House adopted the articles.

PROCEDURE AS TO SPEAKER'S RESIGNATION

Mr. Kamath moved an amendment to Article 77 that the Speaker might at any time, by writing under his hand addressed to the President instead of the Deputy Speaker as provided in the draft article, resign his office.

Mr. Kamath said that it was inappropriate for the Speaker to send in his resignation to his Deputy and it was not in keeping with his high office.

Prof. Shibbanlal Saksena opposing the amendment said that Parliament should be kept independent of the President or the Executive.

Dr. Ambedkar said that the artucle was based on the principle that a person normally should tender his resignation to these who had appointed him. In this case, it was the House that had elected the Speaker, and he should tender his resignation to one who represented the House.

The President should have nothing to do with the House. The Assembly wanted to make the Parliament as completely independent as possible of the Executive and the President. Mr. Kamath withdrew the amendment.

ARTICLES 80 & 81

Clause 80, adopted by the House, says that save as otherwise provided in the Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes. In the case of any equality of votes, the Chairman or Speaker shall exercise a casting vote. The House also passed clause 81, which says that every member of either House of Parliament shall make an affirmation or oath as prescribed.

'DISQUALIFICATIONS OF MEMBERS'

The sub-charter regarding "disqualifications of members" containing four articles upto Article 85 were adopted by the House after a brief discussion.

Dr. Ambedkar moved an amendment stating that no person should be a member both of parliament and of the legislature of a state. The House adopted this amendment without discussion.

The House however, rejected an amendment by Mr. Kamath who suggested that if a member was recalled by the electors in his constituency for failure to discharge properly his duties, or if he died, his seat in Parliament should become vacant.

The House also rejected an amendment by Prof. Shah who wanted that no one who was unable to read, write or speak the national language of India after ten years from the day this constitution came into operation, should be entitled to be a candidate for or offer himself to be elected to a seat in either House of the consembly.

Article 83 relating to disqualifications of membership stated that a person should be disqualified for being chosen as, and for being, a member of either House of Parliament if he held any office of profit, if he was of unsound mind, if he was an undischarged insolvent, if he had ceased to be a citizen of India or was under any acknowledgement of Allegiance to a foreign state of if he was so disqualified by any lawmade by Parliament.

PROF. HIBBANLAL'

Prof. Shibanlal Saksena by an amendment suggested that parliament should not be given power to disqualify candidate from this power, he said, was liable to be abused by the party in power.

Dr. Punjab Rao Deshmukh argued that he was sure that parliament would not act in a spirit which was not supported by the constituencies. The disqualifications that might be prescribed by them would in their very nature be likely to be of emergent character and the hands of the parliament should not therefore be tied down. It should be remembered that the party in power had the support of the people.

Prof. Shibbanlal withdrew the amendment. The House adopted the article and also the subsequent article providing for penalty for sitting and voting before making a declaration or when disqualified.

The House then proceeded to discuss articles concerning the privileges and immunities of members.

MEMBER'S PRIVILEGES

Clause No. 85 dealing with the privileges of members of parliament was next taken up for consideration. In Sub-Section 2 of this article it is laid down that the privileges and immunities of the members will be those laid down by Parliament from time to time but till that time they will be such as those enjoyed by the British House of Commons.

Mr. Kamath moved an amendment for deletion of the reference to the United Kingdom Parliament. Though, he said, it might be argued that it was not derogatory to our constitution in making a reference to the United Kingdom constitution, it would certainly not add dignity to our constitution. It would be far happier if we relied on traditions built up in the Indian Parliament.

Mr. Kamath's amendment was rejected.

The House accepted an amendment by Mr. Jaspat Roy Kapoor, which extended to non-members of parliament who might be on committees of parliament the privileges and immunities enjoyed by members as explained in Sub-Section two of the article.

Another amendment by Prof: K. T. Shah that the parliament should be the sole judge in all matters concerning the privileges of members and that it should have its own officers to enforce its sentences and decrees was also rejected.

FREEDOM OF SPEECH

Mr. Natiruddin Ahmed also referred to the freedom of speech and publication and wanted that the right of members to speak anything in the House, provided they confirmed to the rules of the House and ruling of the speaker, should be guaranteed. It was essential to our freedom, he added.

Mr. Rohini Kumar Chaudhuri and Pandit Lakshmi Kanta Maitra supported the plea for unrestricted publication of speeches made in the House. Pandit Maitra said he was surprised that the same members who under the previous regime fought hard for this right took the opposite view today. The standing orders of the House, he contended, ensured that no lebiellous' or defamatory statements would be made in the House. Whatever the excuse, it was preposterous that something which appeared in official documents could not be published unofficially.

Mr. Ananthasayanam Ayyangar, supporting the provision, said that what Pandit Maitra claimed was not a privilege but a licence. It could not be said that members of parliament in India should possess more rights in this matter than members in England.

EVENING SESSION ON MONDAY

The President Dr. Bajendra Prasad informed the House that a suggestion had been made to him that the House should adjourn for a day in view of the A.I.C.C meeting at Dehra Dun on Saturday and Sunday. He did not think that the proceedings of the House should be stopped on that account, but he would suggest that on Monday the House might meek from 5 p.m. to 8 p.m. in order to enable members to return from Dehra Dun and participate in the proceeding. The House agreed to the president's suggestion.

The House accepted the provision and adjourned till to-morrow.

1.63

Nation 20-5-49

CONSTITUTION MAKERS AFRAID A FREE PRESS

PARLIAMENTARY SPEECHES

NO LEGAL IMMUNITY FOR PUBLICATION

CONSEMBLY ADOPT 15 ARTICLES ON THURSDAY

NEW DELHI, May 19.—The Constituent Assembly today adopted a provision that the rights and privileges of the members of the India Parliament, until defined by Parliament, will be the same as those of members of the British Parliament.

Under the provision, while no member of Parliament will be liable to any proceedings in any court in respect of his speeches in the Parliament or in any of its committees, the newspapers or periodicals will have no immunity from legal action, if any, arising from the publication of the speeches.

Five members pleaded—without success—for "unrestricted right of publication" of speeches made in the Parliament. Pandit Lakshmikant Maitra said it was surprising that the same members who under the previous regime had fought for the right of newspapers to publish speeches in the Parliament, now took a different view.

The Constituent Assembly of India to-day rejected a suggestion by Prof. K. T. Shah that the State should bear the election expenses of candidates to Parliament.

Prof. Shah moved an article which said that all expenses of candidates in connection with election to Parliament should be defrayed out of the Public Treasury in accordance with a scale prescribed by Parliament, provided that any candidate securing less than ten per cent. of the votes should not be entitled to claim such expenses. Moving his article to the House, Prof. Shah said that one of the reasons for the failure of democracy was the heavy cost of seeking election to public bodies like Parliament.

The expenses were so heavy that only parties with large party funds, and individuals with large bank ballances could afford to run election campaigns. As persons with considerable means of their own or persons able to influence powerful parties were not necessarily the best representatives of the people, the Public Treasury should meet the election expenses in order to ensure that the richer candidates did not have an unfair advantage over the poorer candidates.

SHAH'S ARTICLE REJECTED

Mr. H. V. Kamath (C. P. and Berar) and Mr. Tajamul Hussain (Bihar) opposed the article.

Mr. Hussain said that in no civilised country in the world, where the democratic system prevailed, the State met election expenses. Why should India, which was a poor country, introduce that practice, he asked. Look at the number of people who will stand, when they know they will not have to spend anything out of their pocket. The article was rejected.

After discussion, Prof. Shah withdrew another article which sought to disqualify any member of Parliament who was convicted of treason, bribery and corruption or any offence involving moral turpitude.

Opposing the article, Mr. H. V. Kamath said that there was already an article in the Draft Constitution, which enabled Parliament to make laws for such disqualification.

MORE ARTICLES ADOPTED

Articles 73, 74 and 75 dealing with officers of Parliament were adopted without much discussion.

Article 73 lays down that the Vice-President of India shall be ex-officio Chairman of the Council of States, that the Deputy Chairman of the House will be chosen from among the members of the House, and that if the office of Deputy-Chairman falls vacant, another member shall be chosen Deputy- Chairman of the House.

Section 74 deals with conditions under which the Deputy Chairman of the Upper House should vacate his office, namely, when he ceased to be a member or when he resigns or when is removed for incapacity or want of confidence by a majority of the House.

Clause 75 relates to power of the Deputy Chairman or other members of the House to perform the functions of the Chairman, while that office is vacant. It also makes provision for persons chosen by the Council to act during the Chairman's absence.

APPOINTMENT OF SPEAKERS & DY. SPEAKERS

Quick progress was made by the Constituent Assembly in the disposal of 6 more articles relating to the appointment of the Speaker and Deputy Speaker of the House of the People, the provision for vacation and resignation and removal from their offices and power of the Deputy Speakers and other persons to perform the duties of the office during the Speaker's absence and also an article providing for the salaries and allowances of the Chairman and Deputy Chairman and the Speaker and the Deputy speaker.

Mr. T. T. Krishnamachari moved two new articles stating that the Chairman or the Deputy Chairman in

Continued On Page 6

Hindustan Times 21.5.49

C.A. PASSES ARTICLE ON M.P.S' SALARIES

(By Our Special Correspondent)

NEW DELHI, Friday.—The Constituent Assembly once again went off at a tangent today when the simple, straightforward provision relating to salaries and allowances of members of the future Parliament was taken up.

The controversy was started by the erstwhile League zealot, Mr Z. H. Lari, who suggested that legislators' salary should be between one-fourth and one-third of a Cabinet Minister's salary and that the Leader of the Opposition should receive the same salary as that a Minister without Cabinet rank.

Mr Lari's main intention in moving the amendment was evidently to unburden himself of his feeling of frustration, for he railed at what he called one-party Government at the Centre and in the provinces, and mouthing commonplaces about democracy contended that provision for a salary for the Leader of the Opposition would bring an Opposition into being. He brought in the state of affairs in his home province of the U.P. and blamed the party in power for the absence of an Opposition.

Syed Kazi Karimuddin and Mr Naziruddin Ahmed took the cue from him to demand a statutory provision for an Opposition. Kazi Karimuddin urged that the party in power itself should help in the creation of an Opposition and make it possible for its Leader to start a campaign against the Government. Mr Naziruddin Ahmed went even further and said Congress supporters should

Detailed report on page 6

volunteer to form an Opposition party and its Leader should not only have a salary and official recognition and status, but "ample secretariat work." Without an Opposition, he prophesied, the country would go to dogs. For the very existence of the country and to save its future, the Government should create an Opposition.

Mr T. T. Krishnamachari, Mr Ananthasayanam Ayyangar and Mr Biswanath Das gave effective replies to these specious arguments. There was nothing to prevent an Opposition being formed, but it was ridiculous to suggest that the provision of a salary for the Opposition Leader would bring it into existence. Did those who talked of an Opposition have any policy or programme? Did they have any other outlook than one based on communalism? In Parliament there was no opposition except on the issue of Hyderabad. The party in power had no responsibility for creating an Opposition, and the critics should clearly say what they wanted. Did they want a provision in the country's budget for payment to the Opposition?

In any case, it was undesirable to lay down in the Constitution what salary should be paid to legislators and the Leader of the Opposition. The future Parliament would be free to settle this point.

Dr Punjabrao Deshmukh, Mr Tajammul Hussain, Mr Sidhwa and Mr Ram Narain Singh also spoke against Mr Lari's proposal, which was rejected. The Article was passed with an amendment moved by Mr Santhanam, stating that the legislators' salary and allowances should be the same as those of members of the Constituent Assembly until the new Parliament fixed them by law.

The House next disposed of the Articles relating to legislative procedure. The provisions dealing with introduction and passing of Bills, joint sitting of both Houses in certain cases, special procedure in respect of Money Bills and the President's assent to Bills were passed with a few amendments. The Article defining "Money Bills" was held over after a short discussion as the Drafting Committee propose to reconsider it.

Tribune 22.5.

After deciding this important issue, the Constituent Assembly resumed discussion on the draft constitution. It has in this week adopted 21 articles, all relating to the Central Legislature. One of them empowers Parliament to extend its own life in an emergency and another fixes the frequency with which the two Houses will meet. On May 18, there was a spirited discussion on the article relating to the privileges and immunities of the members of Parliament. The demand of a section of members for the removal of all restrictions on the publication of speeches made in Parliament was not agreed to. One of the accepted clauses fixes the minimum age-limit for candidates for the Lower and the Upper House at 25 and 30 respectively.

Amrita Bazar Patrika

23-5-49

MEMBERS' PRIVILEGES

IS the publication of the speeches of members of Parliament in the House privileged even if the report is not authorised by Parliament? The question was debated with some amount of warmth the other day in the Constituent Assembly when Article 85 dealing with the Privileges and Immunities of members of Parliament was taken into consideration. Clause (2) of Article 85 is silent on the point. It merely says that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and "no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". It would appear that this clause, as it stands, would limit the privilege in regard to publication of reports etc. authorised by Parliament.

Several members supported the plea for unrestricted publication of speeches made in the House. This, Mr. Ananthasayanam Ayyangar said, would be "not privilege but licence." We are somewhat surprised at this remark of the Hon'ble member. Public memory is proverbially short. But does not Mr. Ayyangar remember that there was a great agitation in the country on account of the attempt made by the British rulers to prevent the publication of speeches of members of the legislature who happened to be strong critics of the Government of the day? And who were most of these critics? Congressmen. There were ordinances and laws in those days which were invoked by the bureaucracy, in the name of law and order to prevent the public from coming to know what their representatives had said in the legislature. Section 63 of Ordinance No. II of 1932 was one such measure which sought to take away the freedom of the Press in regard to the publication of members' speeches. Sir B. L. Mitter was then the Law Member with the Government of India. Pressed by the President of the legislature to say what in his opinion the law was, he gave his opinion in writing as follows: "In my opinion the Ordinances have made no change in the ordinary law of the land in the matter of publication in the public Press or otherwise of the proceedings of the legislature". But the bureaucracy was undaunted. If the Ordinance did not help, was not the Indian Press (Emergency Powers) Act of 1931, as amended by the Criminal Law Amendment Act of 1932, comprehensive enough to take away the right which the ordinary law of the land gave?

It is sad to reflect, as Pandit Lakshmi Kanta Maitra observed, that Congress leaders who had fought against the bureaucracy in those days on this very question have now imbibed the ideas of the latter. The Constituent Assembly left the Article as it stood, that is, the restrictive clause has remained.

In Clause (3) of the Article there is a reference to the British House of Commons. It says that the privileges and immunities of members of the Houses shall be such as are enjoyed by members of the House of Commons of the Parliament of the United Kingdom. This reference to another Parliament offended the *amour propre* of certain members and the President said that he shared their feeling. But do they know that the law in regard to publication of the speeches of members of Parliament is more liberal than what they are disposed to allow for their own countrymen? The English law on the subject was thus laid down by Chief Justice Cockburn in the celebrated case of Mason *versus* Walter. The law is this: Provided the report is fair and is published without malice, no action for libel is maintainable. The Court further held that if any person published a report of what happens in the Parliament at a time when the public are admitted and the report was fair, he is not liable to any action at the suit of any person who happens to be affected by something libellous in the report. The reason is, the judgment proceeds to say, such reports are parts of the ordinary business of parliamentary life and whatever injury is caused is unavoidable and no blame is imputable to the reporter or to the publisher or to the author.

This part of the English law as explained above should have been incorporated in Article 85, to leave no room for doubt as to the privilege of publication of proceedings of the legislature. It will be seen that no unrestricted, exaggerated or false report will be privileged, but only when "the report is fair and without malice".

We believe the judiciary in India will be guided by the English law. If the British House of Commons is an authority good enough for the personal privileges and immunities of members of the Indian Parliament, the English law should be good enough to be a guide in the publication of members' speeches. The Press is vitally concerned in the matter and, we are sure, the Press in this country will not tolerate the restrictions against which it had fought in British days.

The Tribune

Ambala Cantt., May 23, 1949.

NO RESERVATION FOR MINORITIES

In order to give effect to the decision taken a few days ago by the Minorities Advisory Board to do away with the reservation of seats for the minorities, other than the Scheduled Castes, in both the Central and Provincial Legislatures, Dr. B. R. Ambedkar has tabled certain amendments to the provisions contained in Chapter XIV of the Draft Constitution. These amendments are expected to be taken into consideration by the Constituent Assembly in a few days' time; and lobby indications are that they will be adopted by an overwhelming majority. The acceptance of the amendments without much opposition has been ensured by the unqualified support extended to the decision of the Minorities Board by the spokesmen and leaders of the minority communities. In fact, the decision was reached by the Board at the initiative of some of them who, in view of the changed circumstances of today, pleaded for the abolition of the reservation provision in the interests of the minority they represented. Obviously the Drafting Committee of the Constituent Assembly made special provisions for the reservation of seats for Muslims and Indian-Christians in the constitution to satisfy the communities concerned. Even at the time when the Draft Constitution was published, its authors were strongly criticised for having incorporated in it such provisions as would keep communalism alive. It was also pointed out that, as those provisions were inconsistent with the secular character of the State, they should not have found a place in India's Draft Constitution. But the strangest thing was that the Drafting Committee, while making reservation for Muslims and for Indian Christians in two provinces, entirely ignored the claims of the Sikh minority. This, more than anything else, upset the Sikhs who felt that they had been deliberately discriminated against. The Sikhs, especially the communalists among them, insisted that they should be accorded the same treatment in the matter of representation in the legislatures as was to be accorded to the Muslim community. An invidious distinction made in the treatment of a minority is bound to create resentment among its members, and naturally resentment was visible among Sikhs some of whose leaders put forward all sorts of communal demands. By its sagacious handling of an admittedly difficult situation the Minorities Advisory Board has succeeded in removing the canker of communalism from India's body politic and has paved the way for the healthy growth of the Indian nation. Its task was facilitated to a great extent by the helpful and accommodating attitude of the leaders of the minorities, some of whom actually went to the extent of saying that they would not tolerate special provisions for their community in the new democratic set-up in India because such provisions would prove harmful to it in the long run.

Separate representation for a religious minority brings with it the consciousness that it is distinct from the majority of the people; and that separatist consciousness prevents the welding of the two into one unified nation. In a constitution based on democratic principles all traces that keep alive the embers of separatism and communalism in any shape or form should be obliterated. A large majority of the people of India has always believed that, in spite of the diversity of religion and language, Indians constitute one nation. The extension of communalism to all spheres of public activity by our alien rulers stood in the way of unity, created extreme types of communal antagonisms and eventually resulted in the dismemberment of the country on the basis of religion. In view of that bitter experience, it would be a folly to allow the presence of separatism in India's constitution. That was the reason why from the very beginning an overwhelming majority of the people insisted on the scrapping of the provisions for the reservation of seats for the minorities. It is a tribute to the wardness of the Scheduled Castes. It is, however, gratifying that the reservation has been allowed only for ten years after which it will disappear. India's constitution guarantees certain fundamental rights, enforceable by law, to the individual; it also contains safeguards for the protection of educational, cultural and religious interests of the minorities. In view of these constitutional guarantees the reservation of seats for a religious minority is redundant, unless it is done to perpetuate a permanent cleavage between different sections of the people on the basis of the faith they profess. The foundation of free and democratic India will be laid securely if we rise above sectarianism and communalism. When Dr. Ambedkar's amendments are accepted by the Constituent Assembly, India's constitution will be free from the blemishes that the existence of communalism causes.

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The Tribune

Ambala Cantt., May 23, 1949.

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Separate representation for a religious minority brings with it the consciousness that it is distinct from the majority of the people; and that separatist consciousness prevents the welding of the two into one unified nation. In a constitution based on democratic principles all traces that keep alive the embers of separatism and communalism in any shape or form should be obliterated. A large majority of the people of India has always believed that, in spite of the diversity of religion and language, Indians constitute one nation. The extension of communalism to all spheres of public activity by our alien rulers stood in the way of unity, created extreme types of communal antagonisms and eventually resulted in the dismemberment of the country on the basis of religion. In view of that bitter experience, it would be a folly to allow the presence of separatism in India's constitution. That was the reason why from the very beginning an overwhelming majority of the people insisted on the scrapping of the provisions for the reservation of seats for the minorities. It is a tribute to the patriotism and the sense of responsibility of the leaders of the minorities that they have come to realise the untenability of the reservation provision in the constitution of a democratic state—and have enabled the Minorities Board to recommend the total abolition of such provisions. It is true that the Board has decided to have seats reserved for the Scheduled Castes and that it has also agreed, as a concession to the Sikhs, to include Sikh Harijans among those Castes. This has been done in view of the general backwardness of the Scheduled Castes. It is, however, gratifying that the reservation has been allowed only for ten years after which it will disappear. India's constitution guarantees certain fundamental rights, enforceable by law, to the individual; it also contains safeguards for the protection of educational, cultural and religious interests of the minorities. In view of these constitutional guarantees the reservation of seats for a religious minority is redundant, unless it is done to perpetuate a permanent cleavage between different sections of the people on the basis of the faith they profess. The foundation of free and democratic India will be laid securely if we rise above sectarianism and communalism. When Dr. Ambedkar's amendments are accepted by the Coristituent Assembly, India's constitution will be free from the blemishes that the existence of communalism causes.

The Tribune

Ambala Cantt., May 24, 1949

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HYDERABAD

ASSEMBLY DEBATE ON RETIREMENT AGE FOR JUDGES

(Continued from page 5 col. 4)

ed States officers of the Supreme Court could be appointed only with the concurrence of the Senate. It seemed to him that in the circumstances of today, "our sense of responsibility" had not grown to the extent it had in the United States. It would be dangerous to allow the President to make appointments merely on the advice of the Executive of the day.

UNSUITABLE PROVISION

To make every appointment which required high talent subject to the concurrence of the Legislature was not a very suitable provision. Apart from its being cumbrous it involved possibility of influence by political considerations.

The draft Article steered a middle course. It did not make the President the sole authority in the matter of making appointments nor the Legislature. Provision had been made in the Article that there should be consultation of persons who were 'ex hypothesi' well qualified to give advice on those matters.

Those who advocated concurrence of the Chief Justice of the Supreme Court relied too much on the impartiality of the Chief Justice and his sense of judgment. He admitted that the Chief Justice would be an eminent person but after all he would have all the failings and prejudices as found in others.

The second controversial issue in the Article related to the question of age. Various views had been expressed. There were some who insisted that judges should retire at 60. Others wanted to fix the age limit at 80. There were some who said that the Constitution should not fix any age limit but it should be done by Parliament. Such a proposition could not be accepted. If the matter was left to Parliament, no person could be found to accept the position. Any person who wanted to accept the office would like to know how long he would be able to hold that position.

AGE LIMIT

65 Not To Be Regarded As "The Zero Hour"

Dr. Ambedkar agreed that 65 could not be regarded as the "zero hour" for a man's ability to render service. But under Article 102 it was open for the Chief Justice to call a retired judge to decide a case or a number of cases. There was therefore, less possibility of losing the talent of any person who had served as a Supreme Court Judge.

Dr. Ambedkar said that Prof. Shah's amendment, which sought to prevent acceptance of a position of profit by members of the Judiciary after retirement, could not be accepted. That amendment had been made on the basis of the provisions relating to the Federal Public Service Commission. There was a fundamental difference between members of the Judiciary and the F.P.S.C. The latter served the Government and decided matters on which Government had direct interest. On the other hand, the Judiciary decided matters in which Government had remote interest. The Judiciary decided issues between one citizen and another.

Besides, there were many instances where employment of retired judges to important commissions was necessary. He instanced the case of Mr. Varadachari, who had been appointed head of the Income Tax Investigation Commission, which was an office of profit.

Dr. P. K. Sen, former Judge of the Patna High Court, moved an amendment for the incorporation of a new Article, 103-A which wanted a judge of the Supreme Court to be prevented from accepting any office of emolument after retirement which point had been discussed in amendments to Article 103. The new Article contained a provision that it would not apply to any appointment made during a proclamation of emergency.

Mr. T.T. Krishnamachari raised a point of order whether it would be moved.

Dr. Rajendra Prasad asked Dr. Sen whether he would like to move his new Article which was in substance similar to an amendment moved by Mr. Santhanam to Article 103.

EMERGENCY PROVISION

Dr. Sen said that he would like to move the amendment because it contained a provision regarding emergency which had not been mentioned in the earlier amendments.

Mr. B. Das (Orissa) congratulated Dr. Sen, former Judge, on having the courage of his conviction to move the amendment. Dr. Das said that if Dr. Sen's Article was passed it would bring the Supreme Court and High Court Judges to the level of the people who had not forgotten traditions left by the British regime. He added that except for judges from Madras all the others were still wearing European dress which was against the spirit of the times. He could not understand why High Court judges were given salaries higher than those of Ministers.

Mr. Bakshi Tek Chand (East Punjab) supported Dr. Sen's amendment.

Dealing with Dr. Sen's amendment, Dr. Ambedkar said that there had been two cases in the country when a judge of the Federal Court had been sent on a diplomatic mission. On both these cases there had been a stringent criticism. The late Sir Chimanlal Setalvad had criticised the action of the Government in a newspaper Article and Dr. Ambedkar had shared those sentiments. But Dr. Sen's amendment was either too broad in certain aspects or too narrow in certain others. He would, however, recommend to the Drafting Committee to consider it.

Dr. Rajendra Prasad said that the amendment would be considered later by the House.

After discussing Dr Sen's amendment, the House adjourned to meet at 8 a.m. tomorrow.—API.

DEBATE ON CONSTITUTION OF SUPREME COURT

President To Appoint Judges In Consultation With Chief Justice

NEW DELHI Tuesday— The Constituent Assembly after a three and a half hours discussion today adopted Article 103 laying down the procedure for the establishment and constitution of the Supreme Court. More than once the President, Dr. Rajendra Prasad, requested members to cut short their speeches as 28 out of 58 amendments tabled were moved and discussed.

The Article as adopted by the House provides for the setting up of a Supreme Court of India consisting of a Chief Justice and seven other Judges until Parliament prescribed a larger number.

The Judges of the Supreme Court shall be appointed by the President in consultation with the Chief Justice of India.

The clause originally provided for appointments to the Federal Judicature to be made from amongst the judges and advocates of the High Court, but the House at the instance of Dr. B. R. Ambedkar, Law Minister, accepted Mr. H. V. Kamath's amendment to include eminent jurists among the persons eligible.

A Judge of the Supreme Court shall not be removed except by an order of the President passed after an address presented to him by each House of Parliament supported by a majority of the total membership of that House and by a two-thirds majority of members present and voting.

After discussing the merits of "age versus youth," the House adopted the original provision that a Judge of the Supreme Court shall hold office until he attains the age of 65 years. Among those who favoured 65 was Pame Minister Nehru, who pointed out that many of the leaders were nearing 60 or were above 60. Dr. Ambedkar said that even 65 could not be regarded as the "zero hour" in man's ability to render service while Mr. Satish Chandra (U.P.) declared, "This House, composed as it is of elderly gentlemen, has been unfair to young men."

DETAILS OF PROCEEDINGS

The Constituent Assembly took up consideration of Article 103 which lays down the procedure for the establishment and constitution of the Supreme Court of the Indian Union. Clause one of the Article lays down that there shall be a Supreme Court consisting of a Chief Justice of India and a number of other Judges, not being less than seven as Parliament may prescribe. Clause two of the Article says that every Judge of the Supreme Court shall be appointed by the President of the Union after consultation with the Judges of the Supreme Court and of the High Courts in the States as may be necessary. According to the clause, every Judge of the Supreme Court will hold office till the age of 65.

Mr. Tajamul Hussain (Bihar) moved an amendment which sought to change the name "Chief Justice of India" as it existed in the Draft Constitution to "Supreme Chief Justice of India." Mr. Hussain said that the distinction between Chief Justices of High Courts and the Chief Justice of India should be made very clear.

NUMBER OF JUDGES

Dr. Ambedkar moved an amendment to change the wording of clause one. He wanted the substitution of the words "and until Parliament by law prescribes a larger number of seven other Judges" to be substituted for "and such number of other judges not being less than seven, as Parliament may prescribe." The Law Member said that this change in wording was necessary so that the constitution of the Supreme Court should not be held over until Parliament by law prescribed the number of Judges of the Supreme Court.

An amendment by Mr. Krishna Chandra Sharma (U.P.) sought to delete the words in clause two providing for consultation by the Union President with the Judges of the Supreme Court and of High Courts when he appointed Judges. The President, he said, would always appoint Judges only on the advice of Ministers and therefore the provision for consultation with Judges was not needed.

Prof. Shibbanlal Saxena by an amendment wanted confirmation of the appointment of Judges by a two-thirds majority of the total number of the two Houses of Parliament jointly assembled. In support of his amendment, Prof. Saxena said that the judiciary should not be made a feature of the executive." Though the President of the Union should be the prime mover in the appointment of Judges of the Supreme Court, they should also enjoy the confidence of the Houses of Parliament.

Not merely consultation with but concurrence of the Chief Justice of India was asked for by Mr. Pocker Saheb (Madras) in an amendment. It was of the highest importance that the appointment of Judges of the Supreme Court should be free from political considerations, he said. He also suggested in his amendment the raising of the age-limit for Supreme Court Judges from 65 to 68.

The need for provision for consultation of the Council of State was urged by Prof. K. T. Shah by an amendment. The intention of his amendment was to eliminate party influences. Just as the Lower House enjoyed supreme power in financial matters, the Upper House should be associated in matters concerning the judiciary.

LIFE TENURE FOR JUDGES

After Mr. Santhanam had moved an amendment making a verbal change for clarity of clause two of the Article, Prof. Shah followed with another amendment which wanted the tenure of Judges of the Supreme Court to be for life subject to good behaviour. Prof. Shah's amendment also said that Judges should be given pension if they resigned after ten years' service.

Prof. Shah said this was another way by which he was trying to secure the absolute independence of the judiciary. He added that the tenure for life for Judges of the Supreme Court was an accepted practice in England and till recently in the United States. Prof. Shah also suggested that the pension to be paid for Judges should not be less than their salary so that they might not have any anxiety in retaining their social and economic position after retirement.

Mr. Jaspat Roy Kapoor (U.P.) brought forward an amendment for reducing the age-limit of the Supreme Court Judges to sixty instead of 65, with a proviso that the President could extend the age of retirement of a Judge year to year till he was 65. When other Government servants had to retire at the age of 55 he could not understand why Judges should have a much longer tenure of office. Many Judges were not able to perform their functions even before they were sixty. "I have seen Judges sleeping and snoring", he declared.

Here Mr. Kapoor was interrupted by a member who said "That does not depend on age."

Moreover, he wanted Judges who received handsome salaries from the Government to do honorary social work after the age of sixty.

THE AGE-LIMIT

Mr. Satish Chandra (U.P.) sought by an amendment to leave it to Parliament to fix the age-limit. He contended that the age-limits prescribed by the Constituent Assembly were the highest in the world. "This House, composed as it is of elderly gentlemen," he said, "has been unfair to young men."

Dr. P. K. Sen (Bihar) said that Judges should be placed above fear or temptation and in retirement should be enabled to live in dignity. He moved an amendment which sought to ensure that when a Judge resigned his office on grounds of ill-health, he would be entitled to full pension.

Prof. K. T. Shah moved a new clause which said that a Judge should be debarred from any executive office under the Government of India or under that of any unit and, unless he has resigned his office as Judge, from being elected to Parliament or any State Legislature.

Mr. H. V. Kamath by an amendment suggested that distinguished jurists also should be eligible for the post of Judges of the Federal Judicature. The original clause restricts the selection to judges and advocates of High Court.

INJUSTICE TO PLEADERS

Fighters For Freedom Debarred

Mr. Mohd. Tahir (Bihar) said that the qualifications of pleaders and advocates were the same and there should be no distinction between the two as regards eligibility. The clause as it stood was a "grave injustice" to pleaders who had taken part in the fight for the independence of the country while almost none of the advocates had fought for freedom. He moved an amendment to extend eligibility to pleaders.

Mr. Tajamul Husain (Bihar) had an amendment which said that any charges against a Judge should be investigated by a committee consisting of all the Judges of the Supreme Court. Mr. Husain said that without this amendment, if the majority party in Parliament was not in favour of a particular Judge, his removal would become very easy.

Mr. K. Santhanam by an amendment sought to permit ex-Judges to hold an office of profit with the permission of the President. Mr. Santhanam said that a complete prohibition might create difficulties. For instance, Mr. Justice Varadachariar, ex-Judge of the Federal Court, was the Chairman of the Income-tax Investigation Commission. Similarly, to serve on other commissions retired Judges might be the fittest persons.

Pandit Thakurdas Bhargava supported Prof. Saksena's amendment which said that the appointment of the Chief Justice should be subject to confirmation by Parliament.

NEHRU'S APPEAL

Age Should Not Be Allowed To Debar Ability

The Prime Minister Pandit Jawaharlal Nehru, supported the original provision that the age-limit of a Judge should be 65. It was rather difficult, said Pandit Nehru, to give any particular reason for a particular age. The limits in the past had been governed entirely by the service view. The other view was how to get the best out of an individual for the nation. Each country spent a lot on training a person and it was no good discarding him when he was completely fit and replacing him with an untrained person. It was difficult to say when a person was not working to the peak of his capacity. The peak might be different in different professions. A miner might not be able to work at sixty but it would be absurd to fix an age-limit for an intellectual or for a writer. He doubted weather the Assembly would fix an age-limit for membership of the House or for Ministership, though the point might well be worthy of consideration.

But the fact remained that when absolutely first class persons were needed for certain top grades, it would be a dangerous thing to fix an age-limit. Einstein was certainly very much above sixty but he remained the greatest scientist of the age. This question also came up before him, said the Prime Minister Nehru in connection with the appointment of some first class scientists and he pointed out that India was short enough in first class scientists and it would be a calamity for her not to utilise their services because of some rule fixed for some administrative service which had nothing to do with high class, inventive brain-work. In America the greatest Judge continued to function till the age of 92 and on the Privy Council there were patriarchs with long flowing beards who by their appearance might be anything up to a hundred. Pandit Nehru felt that the age-limit of 65 for Federal Court Judges was by no means unfair. Many of the leaders, he pointed out, were dangerously near sixty or beyond it, but still they functioned.

Mr. Biswanath Das (Orissa) said that Prof. Shah's amendment, to the effect that Judges should be chosen by election and not by selection, involved a "very dangerous principle".

As regards the age-limit, Mr. Das felt that the Drafting Committee's reasons for fixing it at 65 were unconvincing. In a country where the average expectation of life was 28 years, there was little justification for Judges functioning up to 65. The great Hindu seers had provided that the closing stages of life should be reserved for "vanaprastha" or "sanyasa".

Mr. Rohini Kumar Chaudhury (Assam) said that it was rather the minimum age of a Judge than the maximum age which should be fixed. It was very wrong in principle to compel a man of advanced age to declare his age. He would "warn" leaders against celebrating their birthdays. Mr. Chaudhury was shocked to know that Pandit Nehru was sixty. He would have taken Pandit Nehru for a man of fifty if Pandit Nehru had not allowed his birthday to be celebrated.

There was a further complication. Women might be appointed Judges in future but was there any woman who would admit she was 55 or 60. No woman would make such an admission even to gain a kingdom, let alone Judgeship (Laughter).

Mr. Ananthasayanam Ayyangar (Madras) said that the Supreme Court was "the watchdog of Democracy" and it must be above all interference from the executive. The provisions in the constitution relating to the Supreme Court had been made with an eye to that aspect.

Regarding the question of age of Judges Mr. Ayyangar said 65 was a proper age. Retirement at 60 was too early. The age for retirement in the Privy Council was seventy and in America no age-limit had been fixed. Older men must be chosen for judiciary work as premature minds were useless. There might be exceptional cases like that of the present Chief Justice of the Madras High Court who was only forty-three.

Mr. Ayyangar said that he was in agreement with Mr. Kamath's suggestion that a jurist should also be eligible for the post of a Judge of the Supreme Court.

As regards Prof. Shah's amendment for ensuring good behaviour of Judges, Mr. Ayyangar said that provision had been made for removal of a Judge later in the clause but it was not proper to insert such a provision in the beginning of the Article itself.

AMBEDKAR'S REPLY

Ready To Accept Two Amendments

Dr. Ambedkar, Law Minister, winding up the debate on the Article said that he was prepared to accept two amendments, namely, one of a verbal nature moved by Mr. Santhanam and another by Mr. Kamath making jurists eligible for the post of Judges of the Supreme Court.

However, the Law Minister added that he thought that the word "distinguished" in Mr. Kamath's amendment was not a proper one and that the word "eminent" would be more suitable. He would recommend to the Drafting Committee to include the amendment with the insertion of the word it thought proper.

Analysing the amendments to the Article, Dr. Ambedkar said they fell into three classes, namely, those which wanted the concurrence of the Chief Justice of the Supreme Court for the appointment of Judges to that Court those which wanted appointment to be made subject to the confirmation of a two-third majority of Parliament and those which wanted consultation with the Council of States in the matter of appointments to the Supreme Court.

There could be no difference of opinion in the House that the Judiciary should be independent of the Executive and that it must be competent. There were two ways given to them for securing these objects. In Britain appointments were made by the Crown, which meant that they were made by the Executive of the day. In the Unit-

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ORDINANCE-MAKING POWERS

The fears expressed by Dr. Kunzru in the course of the debate in the Constituent Assembly on the President's ordinance-making powers under the new Constitution cannot be dismissed as unjustified. There is general agreement, as the debate itself showed, that the President should have adequate powers to deal with an emergency. The provision, therefore, in the Constitution that the President should have the power to promulgate ordinances—when Parliament is not in session—for meeting urgent needs, can hardly be a subject of controversy. But there is undoubtedly justice in the demand that there should be a limit to the period of an ordinance. Past experience has shown that ordinance-making powers are easily liable to be abused in the name of an emergency. Not only have ordinance-making powers been used when there was no emergency of any kind but sometimes ordinances have been issued within a few days after the close of the session of the legislature, though they could have been easily introduced as ordinary Bills during the session itself. The fact is that ordinance-making powers under the old Government of India Act have been so flagrantly abused that any proposal to revive these powers, without proper checks, gives rise naturally to a feeling of suspicion. The only safeguard provided in the new Constitution is that any ordinance promulgated by the President should be laid before both Houses of Parliament and should cease to operate at the expiration of six weeks from the re-assembly of Parliament. If, as is the case today, Parliament is ordinarily to meet only twice a year it may well be that an ordinance remains in force for six months or even longer. The Law Minister, Dr. Ambedkar expressed his belief that Parliament in future would be meeting more frequently than now and that in any case the President would always be anxious to consult Parliament. A good deal would depend upon the vigilance of Parliament itself and the caurage and determination with which it upholds its position as the rightful legislative authority for the country. Whatever may be the powers conferred by the Constitution, there should be a convention that if there is an emergency requiring the promulgation of an ordinance, Parliament should be immediately summoned to consider the situation. If there is such a convention the danger of an unfair or arbitrary use of ordinance-making powers without regard to the rights of the legislature will be largely eliminated.

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SUPREME COURT CLAUSE ADOPTED BY INDIA ASSEMBLY

PROLONGED DEBATE ON RETIREMENT AGE-LIMIT FOR JUDGES

NEW DELHI, Tuesday.— After probably the lengthiest debate held so far on a single Article, the Constituent Assembly this morning accepted a seven-clause provision for the establishment and constitution of the Supreme Court of India, consisting of a Chief Justice and a maximum of seven Judges.

The Article attracted as many as 27 amendments; and the process of moving them occupied two hours, while the debate on the Article together with the amendments went on for a further hour and a half.

PRESIDENT'S POWERS OF APPOINTMENT DEFINED

The question of an age-limit for the Judges provoked differing views and provided occasion for one of the Prime Minister's rare interventions. The Article provides that a Judge of the Supreme Court shall hold office until he attains the age of 65. Mr. Jaspat Rai Kapoor moved an amendment suggesting that 60 be fixed as the normal age of retirement, but that the President be empowered in any case to extend from year to year the age of retirement up to 65 years.

Pandit Nehru said the primary consideration in fixing the age-limit should be how to get the best service out of the individual. Each country spent a lot of money in training the individual and giving him the opportunity to gather experience, and it was no good discarding him even when he was completely fit and probably still

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in the peak of his mental and physical powers. It would be absurd, for instance, to say that Einstein, who is still the greatest scientist in the world, should be pushed aside because he is above 60. The type of work that a Judge had to do was physically less tiring than the work falling on the administrator, and there had been instances including the classic instance of Holmes of the American Supreme Court, who went on functioning extraordinarily well till he was 92.

A great deal of thought had been given to the question of an age-limit, Pandit Nehru added, and 65 had been arrived at as a fair limit, and he suggested it should not be reduced, particularly at a time when Judges of the right training, experience and calibre were by no means unlimited in number.

Among other amendments proposed was one by Prof. Shibbanlal suggesting that the Chief Justice should be appointed by the President subject to

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INDIA ASSEMBLY

(Continued from page 1, col. 2)

confirmation by two-thirds majority of members of both Houses in joint session. Dr. P. K. Sen wanted that where a Judge resigns his office on grounds of ill-health he should be entitled to pension as if he had continued in service until the age of 65.

Dr. Ambedkar defending the Article said that in present circumstances in India, in which the sense of responsibility was not so developed as in England or elsewhere, it would be dangerous to leave the appointment of Judges entirely to the advice of the executive; nor was it suitable to make the appointment subject to the concurrence of the Legislature. The Article, he explained, steered a middle course. It did not give the President supreme authority in making the appointment nor did it import the influence of the Legislature. It provided that there should be consultation with people who were qualified to give proper advice, namely, Judges of the Supreme Court as well as High Courts in the States.

As regards the age-limit Dr. Ambedkar said that even 65 could not be regarded as the zero hour in a man's intellectual ability, and so it was being provided in a later Article that the Chief Justice should have the power to call retired Judges to sit in a particular case or cases, so that the chances of the country losing the services of experienced and talented Judges might be minimised.

Dr. Ambedkar opposed any restriction on retired Judges accepting an office of profit. He said the case of Mr. Srinivasa Varadachariar, who had been a Judge of the Federal Court, and was now President of the Income-tax Investigation Commission should be the best argument against any restriction. Mr. Varadachariar was obviously the best person for the post he now occupied.

The House adopted the Article with some amendments.

The House adjourned till tomorrow morning.

India news cuttings 1947

Executive's Tendency To Whittle Down Powers Of Judiciary Criticised

(By Our Special Correspondent)

NEW DELHI, Tuesday.—The tendency of the Executive to whittle down the powers, rights and authority of the Judiciary is criticised in a memorandum sent to members of the Constituent Assembly by Federal and High Court Judges. Drafted on the basis of discussion at a conference of the Judges held last March, the memorandum deals with subjects like the appointment and removal of Judges, age of retirement, the right to practice after retirement, and the jurisdiction and powers of superior courts, which were discussed in the Constituent Assembly today.

The memorandum says: "While we recognise that the draft Constitution proposes to liberalise in some respects the existing safeguards against Executive interference, it is felt that further provision should be made in the same direction in order effectively to counteract the tendency (to detract from the status and dignity of the Judiciary) which is bound to become more pronounced as more power passes into the hands of political parties who will control and dominate the Government machinery in the years to come.

"The procedure followed after August 15, 1947," the memorandum proceeds, "does not in practice always ensure the appointment of High Court Judges being made purely on merit without political, communal or party considerations being imported into the matter. Though it is acknowledged readily enough in principle, this is not always kept in view in practice."

The memorandum cites the instance of a Provincial Government, which revealed a growing tendency to treat the High Court as a part of the Home Department, and suggests a procedure for the appointment of High Court Judges, which it thinks would be more suitable. The Chief Justice, it suggests, should send his recommendation directly to the President, who after consultation with the Governor of the Province concerned should make the appointment with the concurrence of the Chief Justice of India. This procedure, the memorandum says, would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and the Home Minister and "justifying" his recommendation to them. The necessity to obtain the concurrence of the Chief Justice of India would provide a safe-guard against political and party pressure at the highest level being brought to bear in the matter.

This procedure was not accepted by the Constituent Assembly, which, it may be taken, was impressed by

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JUDGES' MEMORANDUM

(Continued From Page 1 Col. 8.)

the arguments advanced by Dr. Ambedkar against it. He said that the proposal seemed to imply a too implicit reliance on the impartiality and soundness of the Chief Justice's judgment. The Chief Justice, said Dr. Ambedkar, would after all be a man with all the sentiments, prejudices and failings of the common man, and to allow him practically a veto upon the appointment of Judges was to transfer to him an authority which we are not prepared to vest in the President or the Government of the day.

The memorandum does not think it necessary to provide for the possibility of the Chief Justice of India refusing to concur in an appointment proposed by the President, but if such a situation perchance arose, the President could make a different proposal.

The memorandum suggests that the right to fix the salary, pension, leave and allowances of Judges should be taken out of the purview of the Units and made a Central subject. It says that the obvious desirability of maintaining uniformity in the position, status and privileges of Judges of High Courts in the Units further reinforces its recommendation.

Here are other recommendations made in the memorandum:—

Provision should be made to place exclusively in the hands of the High Courts the power of appointment, dismissal, posting, promotion, leave, etc., in respect of the entire Subordinate Judiciary including District Judges, in order to free it completely from the influence of the party in power.

The age limit for retirement should be fixed in the Constitution and not be left to be determined by State Legislatures.

The proposal to reduce salaries should be dropped.

No person should be appointed a Judge of the Supreme Court or of a High Court who has at any time accepted the post of Minister in the Union of India or in a State, and no I.C.S. man should be the permanent Chief Justice of any High Court.

DISCUSSION ON SEPARATION OF JUDICIARY

Continued from page 4 col. 6

making. The principle of separation of the executive from the judiciary had been regarded as "the cornerstone of democracy." In the history of the independence movement of this country it had been urged often that the judiciary should be completely free from the influence of the executive.

It had been accepted as a principle of judicial administration that judges should not be concerned with what happened in the legislature, Prof Shah added. He thought this was a sound proposition and should be clearly emphasized in the constitution.

The possibility of high judicial officers being influenced by the prospect of getting equally high or higher executive posts should also be removed, Prof. Shah said. If such a provision was not made, they might be tempted by "the loaves and fishes of office."

In a new democratic country like India, the judiciary should be completely independent and in no sense open to the influence of the executive. There had been instances in the past when superior executive officers did not scruple to issue instructions as to the course the legal proceedings should take. Prof. Shah trusted that the simple proposition of separation of judiciary and executive would not find any opposition from the House.

Mr K. M. Munshi opposing Prof. Shah's amendment said that the doctrine of separation of powers which was expounded in the U.S.A. 150 years ago was now an "exploded" doctrine. Such separation of powers could not exist in a modern State. Nowadays the executive had powers to legislate and act as a judiciary, as for instance industrial tribunals. The judiciary also had sometimes to enforce its decisions when it acted as an executive. There were enough guarantees in the constitution to safeguard the independence of the judiciary which was being invested with as much independence as was enjoyed by the Privy Council in England or the Supreme Court in the U.S.A. Therefore, a provision as contemplated by Prof. Shah was not necessary.

Mr R. K. Sidhwa said that he accepted the principle of separation of the judiciary from the executive, but added it was unnecessary to discuss the subject as it had been discussed threadbare in the House before.

Separation Of Judiciary

Dr P. K. Sen, former Judge of the Patna High Court, supporting the amendment moved by Prof. Shah, said that it took his breath away when Mr Munshi said that separation of the judiciary from the executive was an exploded doctrine. This question had been mooted from the time of Raja Ram Mohan Roy and he hoped the House would not reject Prof. Shah's amendment in a hurry. The combination of executive and judicial functions in the subordinate judiciary had led to "the mischief that we have complained against for many many years."

Mr H. V. Kamath, supporting the amendment, said that the paramount need for an independent judiciary arose from the fact, first, that there should be an independent authority to arbitrate and settle disputes that might arise between the Centre and the units under the Federal Constitution, and, secondly, it was essential that the citizen in a democratic State should be in a position to refer his complaints against the State to an impartial authority. The inroads upon personal liberty and democratic freedom all over the globe today had made the need of separation of the judiciary from the executive greater than ever.

Mr Alladi Krishnaswami Ayyar said he was in wholehearted agreement with the general principle of separation of executive and judicial functions, but acceptance of Prof. Shah's amendment using the expressions "completely separate" and "wholly independent of the executive or the legislature" would lead to considerable difficulty. He wished to point out that Prof. Shah's amendment was not germane to the Article now under consideration. The House had already considered the general question and adopted an Article on the subject. It was felt then that having regard to the present condition of things, it would be impossible to work the constitution in the first few years if immediately the separation of the executive and judiciary was to be undertaken. Prof. Shah's amendment went against the merit of the Article already adopted by the House.

The whole administration would be thrown out of gear if there was to be a complete separation of the executive and the judiciary from the day the constitution came into force, as suggested by Prof. Shah. The working of administrative institutions in different parts of the world, including the U.S.A., showed that a large number of judicial functions had to be invested in what might be called executive or administrative bodies. Without that there would be no modern administration. Those functions might not be completely judicial but they partook of a judicial character. In Australia, where there was no such clause as this, the question arose whether, for example, an income-tax tribunal could deal with the question of assessment at all and the Privy Council had to come to their rescue. He would suggest that the proper approach to the question should be to profit by the experience of countries where this theory of separation was recognized.

Dr Punjabrao Deshmukh said that the principle of separation of the judiciary from the executive was already recognized in the Article adopted by the House earlier. He, however, did not support Prof. Shah's amendment because he felt that what had been provided for was sufficient.

Mr Naziruddin Ahmed wholeheartedly supported the principle of the amendment. If this was not the right place for incorporating the amendment, it could be inserted elsewhere. It was somewhat surprising to hear after 50 years of agitation that the independence of the judiciary was not a desirable thing. Mr Naziruddin Ahmed added: "We have been under slavery for centuries and we have not been able to get rid of the slave mentality. That is why we are hearing today the same argument which the British Government has been advancing for over 50 years."

Mr Naziruddin Ahmed said that there was no one today who did not support the principle of independence of the judiciary "except those in power."

Dr Ambedkar, replying to the debate, said that this matter was discussed in great detail while discussing the Principles of Directive Policy. He did not see why this matter was raised again today and why there was a debate when Article 39 (A) had already been adopted.

(Article 39 (A) says: "The State shall take steps to separate the judiciary from the executive in the public services of the State.)

Prof. Shah's amendment was rejected and the House adjourned till today.—A.P.I.

E-MAKING POWERS FOR PRESIDENT

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ke liberty of the indivi- ere hotly debated in the opted only three Articles.

that the President could able to act independently of neil of Ministers in view of isions in the Instrument of ons.

House later rejected an ent by Prof. K. T. Shah the inclusion of a new to separate the judiciary executive. Prof. Shah said ration of the judiciary from utive was "the corner-stone eracy," while Mr K. M. opposing, said that the doc- separation of powers was exploded doctrine.

ouse earlier postponed con- n of Articles 92 to 99 as Dr ar said they were affected by 90 defining money bills e wanted to be deferred of a flaw.

the Constituent Assembly met yesterday, the President, Dr Rajendra Prasad, proposed that Articles 67-A and 90, consideration of which had been deferred earlier, should be taken up.

Dr Ambedkar, Law Minister, said he was withdrawing Article 67-A which sought to empower the President of the Indian Union to nominate three experts to assist and advise the Houses of Parliament on any particular Bill. Article 67, he added, had provided for 12 nominations and there would be some more nominations regarding Anglo-Indians. It was felt that to add to that nominated quantum would be derogatory to the representative character of the Assembly.

Regarding Article 90, which defines money bills, Dr Ambedkar said that it should be deferred as he had discovered a flaw in it. He also wanted consideration of Articles 92 to 99 to be postponed as they were affected by Article 90.

Language Question

Seth Govind Das (C.P.) asked when the House would take up consideration of Article 99 dealing with the question of the language to be used in Parliament. The Article says that business in Parliament shall be transacted either in Hindi or English but that the Chairman of the Council of States or the Speaker in the case of the Lower House can permit a member not able to express himself in either of these two languages to address the House in his mother tongue.

Seth Govind Das said that the Constitution had to be passed in Hindi also and asked the President how far the committee entrusted with the task of translating the Constitution had progressed and how long this important Article was sought to be postponed.

Dr Prasad replied that he had received no report from the committee entrusted with the translation work and unless all the Articles passed so far by the House were translated, the question could not be taken up.

When Mr Govind Das again asked whether a definite date could be given for discussion of Article 99, Dr Prasad said that he was not in a position to say anything at the moment. The Article, he added, might have to be postponed for some time.

The House passed without debate Article 100 which debars Parliament from discussing the conduct of a judge of the Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge.

It also adopted Article 101 which says that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. It also provides that no officer or other member of Parliament in whom powers are vested for regulating Parliament procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise of those powers.

President's Powers

The House next considered the power of the President to promulgate ordinances during the recess of Parliament when immediate action was necessary. This power is sought to be given under Article 102 which lays down that an ordinance promulgated by the President shall be laid before both Houses of Parliament and shall cease to operate at the expiry of six weeks from the reassembly of Parliament.

The heading of the Article is "Legislative Powers of the President," The House rejected an amendment moved by Prof. K. T. Shah seeking to substitute the word "extraordinary" for "legislative."

Prof. Shah said: "We must not by any mention in this Constitution imply that the powers of the President are any but executive powers. If he has any other powers, he has extraordinary powers which should be used only under extraordinary circumstances."

Mr Tajamul Hussain (Bihar) opposed the amendment. He felt that the word "legislative" was proper.

Mr B. Poker (Madras) moved an amendment seeking to add the proviso that such an ordinance issued by the President shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.

Mr Poker said: "No doubt, there may be circumstances in which action has to be taken immediately but that should not deprive a citizen of his fundamental right of being tried by a court of law. I have moved this amendment because of the recent experiences which we have had in the various provinces in the matter of enforcing ordinances and Public Safety Acts. In fact, I know that in the province of Madras there have been hundreds of cases in which provisions of the Public Safety Act passed by the Legislature of that province have not been complied with and persons have been arrested and detained in custody for months without being told the ground on which they were arrested. This practice was condemned in the strongest terms by the High Court of Madras a court of law. This is a very scandalous state of affairs."

Mr H. V. Kamath moved an amendment which said that the ordinances of the President should be placed before Parliament within four weeks of their promulgation.

Mr Kamath said that his amendment was a safeguard against abuse of the Article by any future President who might be "inclined towards dictatorship."

New Circumstances

Pandit H. N. Kunzru wanted by an amendment that an ordinance should cease to operate at the expiry of 30 days from its promulgation. He said that under the provisions of Article 102, which were similar to those laid down in the Government of India Act 1935, an ordinance would remain in force for 7-12 months. The Government of India Act was not meant to confer full responsibility on India and the executive was not even partially responsible to the legislature. The provisions were made to enable the British Government to exercise authority with regard to the maintenance of law and order. The situation had changed now. There was no reason why the process laid down in the Government of India Act should sought to be repeated in the new Constitution. In several countries the executives did not possess such power. Extraordinary decrees should be subject to the approval of Parliament. There was no reason why the executive should have the power to legislate for such a long period. The period should be so long as will enable the legislature to meet and consider the extraordinary situation requiring promulgation of an ordinance, particularly affecting the peace and security of the country. The House must, therefore, see that the period during which an ordinance remained in force was as short as possible.

Prof. Shah recommended by an amendment that an ordinance should be placed before Parliament as soon as it reassembled and unless approved by Parliament it should cease to operate. Prof. Shah contended that the promulgation of an ordinance was a negation of the rule of law normally passed by legislature even though it was issued to meet an emergency. The very fact that it was an extraordinary power made it clear that it should not be allowed to last a minute longer than such extraordinary circumstances required. Even though the President would act on the advice of responsible executive, the House should not allow such power to be exercised for any length of time to suit the exigencies of party politics.

Issue Of Ordinances

Sardar Hukum Singh suggested by an amendment that the President should consult the Council of Ministers before issuing an ordinance. He said that the constitution being a written one, in matters of such importance every detail must be expressly put down. He said that the constitution was investing the President with powers which appeared dictatorial, even though by convention the President would become the constitutional head. In India convention had to grow yet.

Mr R. K. Sidhwa raised a point of order that since the Fundamental Rights had provided for individual freedom and personal liberty of citizens the amendment moved by Mr B. Poker was ultra vires.

The President ruled that the amendment was not inconsistent with Article 15 of the Fundamental Rights.

Supporting the Article as it was, Dr Punjabrao Deshmukh said that under the present extraordinary time through which the world was passing, every sphere of human activity was now covered by Government. The Government was not only the administrative authority but shopkeepers, contractors and traders. Every sort of duty which was ordinarily being done by citizens was now being performed by Government. It was, therefore, all the more necessary to confer on the President such powers. The day-to-day administration had become complex particularly in the exercise of trade controls and imposition of duties and the executive must possess such powers. He was sure that there was no possibility of the powers being misused by the President.

While Mr Tajamul Hussain opposed Dr Deshmukh's amendment, Mr Mahboobali Baig supported it on the ground that it was not desirable to give the executive an opportunity to delay or postpone the summoning of Parliament to consider its action.

Dr Ambedkar's Reply

Dr Ambedkar replying to the debate said that Pandit Kunzru had raised some fundamental objections to the provisions contained in the Article. Dr Ambedkar pointed out that Sections 42 and 43 of the Government of India Act related to the power of issuing ordinances by the Governor-General. Section 43 conferred powers on the Governor-General to promulgate an ordinance which he felt necessary to discharge his functions requiring the exercise of his discretion and individual judgment. In that Section the legislature was completely excluded and the Governor-General could do anything he liked. In fact he was a "parallel legislative authority." The President of the Indian Union did not possess any independent power of legislation. He was not even under the Article entitled to promulgate an ordinance when the legislature was in session. All that the House was doing now was to continue the powers given under Section 42 of the Government of India Act in respect of the Governor-General to the President. He was allowed to promulgate an ordinance only when the legislature was in recess. The provisions did not confer upon him any more power than that possessed by the Central Legislature itself. The President had no special responsibility, no discretion and no individual judgment. The Article was somewhat analogous to the provisions contained in the British Emergency Act under which the King was entitled to issue a proclamation, when Parliament was not in session. These powers had been conferred in order to deal with an emergency when provisions under the ordinary law existing at that particular moment might be found deficient to deal with it.

Replying to the amendment of Mr Poker, Dr Ambedkar said that Subclause 3 of the Article laid down that any law made by the President under the provisions of the Article should be subject to the same limitation as the law enacted in the ordinary process. The Fundamental Rights conferred full freedom and personal liberty on individuals and no law could be enacted which contravened the provisions of the Constitution. Therefore, any law made under the provisions of Article 102 should also automatically be subject to the provisions relating to the Fundamental Rights of citizens, and should not override those provisions.

Referring to Pandit Kunzru's suggestion that any ordinance promulgated by the President should automatically come to an end at the expiry of 30 days, Dr Ambedkar said that the reason for moving such amendments was due to the fear that the executive might not summon Parliament within a month or two and might take longer period. He felt that there was no ground for such fear. He believed that owing to the exigencies of Parliamentary work, and the necessity of the Government of the day to maintain confidence of Parliament, such dilatory process would not be permitted by the executive and ordinances would not be allowed to remain in operation for unduly long period.

Mr Kamath: "Is it not repugnant to the idea of freedom and democracy that the executive should be given the power to issue ordinances?"

Dr Ambedkar: My feeling is that the main reason for the sentiment of hostility which has been expressed by Mr Kamath and Pandit Kunzru really arose from the heading of the Chapter. The heading ought to be "powers to legislate by the President when Parliament not in session." Such innocuous heading would have avoided criticisms. "Ordinance" is a bad word. Mr Kamath can suggest a better word. I too do not like the word.

Advice Of Ministers

Referring to Sardar Hukum Singh's amendment, Dr Ambedkar said that the amendment was unnecessary as the President would not act except under the advice of the Council of Ministers.

Dr Rajendra Prasad asked Dr Ambedkar whether there was any provision in the Constitution to the effect that the President was bound to accept the advice of the Council of Ministers. Article 61 laid down the duties of the Ministers that they would aid and advise the President in the exercise of his functions, but it did not specifically state that the President would accept the advice of the Ministers. He felt that there was no provision in the Constitution which stated that the President was bound to accept the advice of the Ministers.

Dr Ambedkar pointed out that the words "in the exercise of his functions" were very important words and the President could not exercise any of his functions without the aid and advice of the Ministers.

The President: I have my doubts that those words will be binding on the President. The Article does not say that the President shall be bound to accept that advice. Is there any difficulty in making a specific provision that the President is bound to accept the advice?

Dr Ambedkar: The President can and will never be able to act independently of the Council of Ministers. If he does not accept the advice of one Ministry he has to find another Ministry. There is a provision relating to this in the Instrument of Instructions. Further there was an amendment to the effect that "in the exercise of the powers conferred upon him, the President shall be guided by the advice of the Ministers." He added that if there were any difficulties of doubts they would certainly be removed. He wanted to impress upon the House the fact that the President of India would be quite different in conception from that of the President of the U.S.A. He thought this would clear many doubts.

Mr Kamath: We are going one step further than the most atrocious British régime.

Dr Rajendra Prasad: You have already made a speech, you have no business to make those expressions. The House rejected all the amendments and adopted the Article.

FEDERAL JUDICATURE

The House then proceeded to a discussion of Chapter 4 of Part 5 of the Constitution relating to the Federal Judicature. Before the Articles in the Draft Constitution on the subject were taken up for consideration, Prof. K. T. Shah moved an amendment for the inclusion of a new Article 102-A.

Prof. Shah's amendment read: "Subject to this Constitution the judiciary in India shall be completely separate from and wholly independent of the executive or the legislature."

In support of his amendment, Prof. Shah said that it initiated a very important principle of constitution-

Continued on back page col. 1

ORDINANCE-MAKING POWERS FOR PRES

DISCUSSION ON FINANCE ARTICLES DEFERRED

PROPOSAL FOR SEPARATION OF JUDICIARY REJECTED

Important constitutional principles like liberty of the individual and independence of the judiciary were hotly debated in the Constituent Assembly yesterday which adopted only three Articles.

Article 102, which defines the power of the President of the Union to promulgate ordinances during recess of Parliament, evoked considerable discussion. Though no less than 20 amendments had been given notice of to this Article, which was described by Mr Kamath as "a more atrocious step" than any in the British régime, only one amendment of a verbal nature moved by Dr Ambedkar was accepted by the House.

Discussion on the Article led to the question how far the President would be bound by the advice of Ministers. The President of the Assembly, Dr Rajendra Prasad, raised a point whether it had been specifically laid down anywhere in the Constitution that the President was bound to accept the advice of the Council of Ministers. Dr Ambedkar replied that the President could never be able to act independently of the Council of Ministers in view of the provisions in the Instrument of Instructions.

The House later rejected an amendment by Prof. K. T. Shah seeking the inclusion of a new Article to separate the judiciary from the executive. Prof. Shah said that separation of the judiciary from the executive was "the corner-stone of democracy," while Mr K. M. Munshi, opposing, said that the doctrine of separation of powers was now an exploded doctrine.

The House earlier postponed consideration of Articles 92 to 99 as Dr Ambedkar said they were affected by Article 90 defining money bills which he wanted to be deferred because of a flaw.

When the Constituent Assembly met yesterday, the President, Dr Rajendra Prasad, proposed that Articles 67-A and 90, consideration of which had been deferred earlier, should be taken up.

Dr Ambedkar, Law Minister, said he was withdrawing Article 67-A which sought to empower the President of the Indian Union to nominate three experts to assist and advise the Houses of Parliament on any particular Bill. Article 67, he added, had provided for 12 nominations and there would be some more nominations regarding Anglo-Indians. It was felt that to add to that nominated quantum would be derogatory to the representative character of the Assembly.

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Language Question

Seth Govind Das (C.P.) asked when the House would take up consideration of Article 99 dealing with the question of the language to be used in Parliament. The Article says that business in Parliament shall be transacted either in Hindi or English but that the Chairman of the Council of States or the Speaker in the case of the Lower House can permit a member not able to express himself in either of these two languages to address the House in his mother tongue.

Seth Govind Das said that the Constitution had to be passed in Hindi also and asked the President how far the committee entrusted with the task of translating the Constitution had progressed and how long this important Article was sought to be postponed.

Dr Prasad replied that he had received no report from the committee entrusted with the translation work and unless all the Articles passed so far by the House were translated, the question could not be taken up.

When Mr Govind Das again asked whether a definite date could be given for discussion of Article 99, Dr Prasad said that he was not in a position to say anything at the moment. The Article, he added, might have to be postponed for some time.

The House passed without debate Article 100 which debars Parliament from discussing the conduct of a judge of the Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge.

It also adopted Article 101 which says that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. It also provides that no officer or other member of Parliament in whom powers are vested for regulating Parliament procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise of those powers.

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Prof. Shah said: "We must not by any mention in this Constitution imply that the powers of the President are any but executive powers. If he has any other powers, he has extraordinary powers which should be used only under extraordinary circumstances."

Mr Tajamul Hussain (Bihar) opposed the amendment. He felt that the word "legislative" was proper.

Mr B. Poker (Madras) moved an amendment seeking to add the proviso that such an ordinance issued by the President shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.

Mr Poker said: "No doubt, there may be circumstances in which action has to be taken immediately but that should not deprive a citizen of his fundamental right of being tried by a court of law. I have moved this amendment because of the recent experiences which we have had in the various provinces in the matter of enforcing ordinances and Public Safety Acts. In fact, I know that in the province of Madras there have been hundreds of cases in which provisions of the Public Safety Act passed by the Legislature of that province have not been complied with and persons have been arrested and detained in custody for months without being told the ground on which they were arrested. This practice was condemned in the strongest terms by the High Court of Madras recently. This is a very scandalous state of affairs."

Mr H. V. Kamath moved an amendment which said that the ordinances of the President should be placed before Parliament within four weeks of their promulgation.

Mr Kamath said that his amendment was a safeguard against abuse of the Article by any future President who might be "inclined towards dictatorship."

New Circumstances

Pandit H. N. Kunzru wanted by an amendment that an ordinance should cease to operate at the expiry of 30 days from its promulgation. He said that under the provisions of Article 102, which were similar to those laid down in the Government of India Act 1935, an ordinance would remain in force for 7-1/2 months. The Government of India Act was not meant to confer full responsibility on India and the executive was not even partially responsible to the legislature. The provisions were made to enable the British Government to exercise authority with regard to the maintenance of law and order. The situation had changed now. There was no reason why the process laid down in the Government of India Act should sought to be repeated in the new Constitution. In several countries the executives did not possess such power. Extraordinary decrees should be subject to the approval of Parliament. There was no reason why the executive should have the power to legislate for such a long period. The period should be so long as will enable the legislature to meet and consider the extraordinary situation requiring promulgation of an ordinance, particularly affecting the peace and security of the country. The House must, therefore, see that the period during which an ordinance remained in force was as short as possible.

Prof. Shah recommended by an amendment that an ordinance should be placed before Parliament as soon as it reassembled and unless approved by Parliament it should cease to operate. Prof. Shah contended that the promulgation of an ordinance was a negation of the rule of law normally passed by legislature even though it was issued to meet an emergency. The very fact that it was an extraordinary power made it clear that it should not be allowed to last a minute longer than such extraordinary circumstances requir-ed. Even though the President would act on the advice of responsible executive, the House should not allow such power to be exercised for any length of time to suit the exigencies of party politics.

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Sardar Hukum Singh suggested by an amendment that the President should consult the Council of Ministers before issuing an ordinance. He said that the constitution being a written one, in matters of such importance every detail must be expressly put down. He said that the constitution was investing the President with powers which appeared dictatorial, even though by convention the President would become the constitutional head. In India convention had to grow yet.

Mr R. K. Sidhwa raised a point of order that since the Fundamental Rights had provided for individual freedom and personal liberty of citizens the amendment moved by Mr B. Poker was ultra vires.

The President ruled that the amendment was not inconsistent with Article 15 of the Fundamental Rights.

Supporting the Article as it was, Dr Punjabrao Deshmukh said that under the present extraordinary time through which the world was passing, every sphere of human activity was now covered by Government. The Government was not only the administrative authority but shop-keepers, contractors and traders. Every sort of duty which was ordinarily being done by citizens was now being performed by Government. It was, therefore, all the more necessary to confer on the President such powers. The day-to-day administration had become complex particularly in the exercise of trade controls and imposition of duties and the executive must possess such powers. He was sure that there was no possibility of the powers being misused by the President.

While Mr Tajamul Hussain opposed Pandit Kunzru's amendment, Mr Mahboob Ali Baig supported it on the ground that it was not desirable to give the executive an opportunity to delay or postpone the summoning of Parliament to consider its action.

Dr Ambedkar's Reply

Dr Ambedkar replying to the debate said that Pandit Kunzru had raised some fundamental objections to the provisions contained in the Article. Dr Ambedkar pointed out that Sections 42 and 43 of the Government of India Act related to the power of issuing ordinances by the Governor-General. Section 43 conferred powers on the Governor-General to promulgate an ordinance which he felt necessary to discharge his functions requiring the exercise of his discretion and individual judgment. In that Section the legislature was completely excluded and the Governor-General could do anything he liked. In fact he was a "parallel legislative authority." The President of the Indian Union did not possess any independent power of legislation. He was not even under the Article entitled to promulgate an ordinance when the legislature was in session. All that the House was doing now was to continue the powers given under Section 42 of the Government of India Act in respect of the Governor-General to the President. He was allowed to promulgate an ordinance only when the legislature was in recess. The provisions did not confer upon him any more power than that possessed by the Central Legislature itself. The President had no special responsibility, no discretion and no individual judgment. The Article was somewhat analogous to the provisions contained in the British Emergency Act under which the King was entitled to issue a proclamation, when Parliament was not in session. These powers had been conferred in order to deal with an emergency when provisions under the ordinary law existing at that particular moment might be found deficient to deal with it.

Replying to the amendment of Mr Poker, Dr Ambedkar said that Sub-clause 3 of the Article laid down that any law made by the President under the provisions of the Article should be subject to the same limitation as the law enacted in the ordinary process. The Fundamental Rights conferred full freedom and personal liberty on individuals and no law could be enacted which contravened the provisions of the Constitution. Therefore, any law made under the provisions of Article 102 should also automatically be subject to the provisions relating to the Fundamental Rights of citizens, and should not override those provisions.

Referring to Pandit Kunzru's suggestion that any ordinance promulgated by the President should automatically come to an end at the expiry of 30 days, Dr Ambedkar said that the reason for moving such amendment was due to the fear that the executive might not summon Parliament within a month or two and might take long a period. He felt that there was no ground for such fear. He believed that owing to the exigencies of Parliamentary work, and the necessity of the Government of the day to maintain confidence of Parliament, such dilatory process would not be permitted by the executive and ordinance would not be allowed to remain in operation for unduly long period.

Mr Kamath: "Is it not repugnant to the idea of freedom and democracy that the executive should be given the power to issue ordinances?

Dr Ambedkar: My feeling is that the main reason for the sentiment of hostility which has been expressed by Mr Kamath and Pandit Kunzru really arose from the heading of the Chapter. The heading ought to be "power to legislate by the President when Parliament not in session." Such a pernicious heading would have avoided criticisms. "Ordinance" is a bad word. Mr Kamath can suggest a better word. I too do not like the word.

Advice Of Ministers

Referring to Sardar Hukum Singh's amendment, Dr Ambedkar said that the amendment was unnecessary as the President would not act except under the advice of the Council of Ministers.

Dr Rajendra Prasad asked Dr Ambedkar whether there was any provision in the Constitution to the effect that the President was bound to accept the advice of the Council of Ministers. Article 61 laid down the duties of the Ministers that they would aid and advise the President in the exercise of his functions, but it did not specifically state that the President would accept the advice of the Ministers. He felt that there was a provision in the Constitution which stated that the President was bound to accept the advice of the Ministers.

Dr Ambedkar pointed out that the words "in the exercise of his functions" were very important words and the President could not exercise his functions without the aid and advice of his Ministers.

Amrita Bazar Patrika
25-5-49

PRESIDENT'S POWERS

THE CONSTITUENT ASSEMBLY has adopted without any amendment Article 102 of the Draft Constitution, which empowers the President of the Union to promulgate Ordinance when he is "satisfied that circumstances exist which render it necessary for him to take immediate action", except "when both Houses of Parliament are in session". An Ordinance thus promulgated "shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions".

It is well known that the framers of the Draft Constitution made a liberal use of the Government of India Act, 1935. The power given to the Governor-General by Section 42 of that Act is given to the President by Article 102 of the Draft Constitution. There are, however, two important points of difference. In the first place, under Section 42 the Governor-General is required to "exercise his individual judgment as respects the promulgation" of certain types of Ordinances. But the President will have no right to "exercise his individual judgment"; he will always act on the advice of the Council of Ministers. Secondly, Section 42 makes it necessary for the Governor-General to take "instructions from His Majesty" before promulgating certain types of Ordinances. There is no such provision in the Draft Constitution, for it does not recognise "His Majesty".

Section 42 of the Act of 1935 relates to Ordinances promulgated "at any time when the Federal Legislature is not in session". Section 43 empowers the Governor-General to promulgate Ordinances "at any time"—i.e., even when the Federal Legislature is in session—with respect to certain subjects. Such Ordinances can continue in operation for one year. As Dr. Ambedkar pointed out, this Section completely excludes the Legislature and makes the Governor-General a "parallel legislative authority". This provision has found no place in the Draft Constitution. The President cannot issue Ordinances if Parliament is in session.

The Ordinance-making power of the head of the Executive is essentially a device for meeting emergencies. It is quite conceivable that a situation arising unexpectedly at a time when the Legislature is not in session may require immediate legislation. In England there is an Emergency Act under which the King is entitled to issue a Proclamation when Parliament is not in session. Such emergency legislation should be subject to clear restrictions, so that it may not encroach unnecessarily upon the liberty of the subject. Such restrictions are not wanting in the Draft Constitution.

Article 102 does not say that the Ordinance-making power of the President will be exercised on Ministerial advice alone. Dr. Rajendra Prasad had a lurking suspicion that the President might not accept Ministerial advice and feel inclined to act according to his own judgment. Article 61(1) lays down that the Council of Ministers will "aid and advise the President in the exercise of his functions". Dr. Rajendra Prasad pointed out that this Article did not specifically state that the President was bound to accept Ministerial advice. He asked whether there was any difficulty in making a specific provision that the President was bound to accept that advice. Dr. Ambedkar replied:

> The President can and will never be able to act independent of the Council of Ministers. If he does not accept the advice of one Ministry he has to find another Ministry. There is a provision relating to this in the *Instrument of Instructions*.

For argument's sake it may be pointed out that a Ministry might not resign even after the President's rejection of its advice on a particular matter. What happened then? Dr. Ambedkar "wanted to impress upon the House the fact that the President of India would be quite different in conception from that of the U.S.A." But Dr. Ambedkar's commentary will have no legal effect: his explanations will not be treated as part of the Constitution by the Supreme Court. The words "aid and advise" in Article 61(1) may be normally taken to be sufficient; but if a man of Dr. Rajendra Prasad's position and experience feels that the President may yet become a dictator, we see no harm in making the Article quite explicit.

Pandit H. N. Kunzru wanted by an amendment that an Ordinance under Article 102 should cease to operate at the expiration of 30 days from its promulgation. Dr. Ambedkar said that the reason for moving this amendment was the fear that the Executive might not summon Parliament within a month or two. He felt that there was no ground for such fear. Others, however, may not share his abundant faith in future Ministers. Under Articles 69(1) and 102(2) an Ordinance may remain in force for 7½ months. Is it inconceivable that a power-loving Ministry may try to keep itself in office for 7½ months with the help of Ordinances which the Supreme Court cannot declare invalid? Pandit Kunzru's amendment ought to have been adopted.

A member from Madras wanted to add the proviso that Ordinances issued under Article 102 "shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law". He moved this amendment, he said, "because of the recent experiences which we have had in the various Provinces in the matter of enforcing Ordinances and Public Safety Acts". Without commenting on these "recent experiences" we may say that Article 102 (3) makes sufficient provision for safeguarding personal liberty. Any Ordinance made by the President is subject to the same limitations as any law enacted in the ordinary process. As Dr. Ambedkar pointed out, Part III (Fundamental Rights) of the Draft Constitution could not be contravened by any Ordinance.

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The Hindustan Times

WEDNESDAY, MAY 25, 1949

ORDINANCE-MAKING POWERS

Article 102 of the constitution which defines the ordinance-making powers of the President was passed by the Constituent Assembly on Monday in the form in which it was introduced, after an interesting discussion in the course of which attempts were made to amend the article in order to restrict these powers. The article authorizes the President to promulgate ordinances when Parliament is not in session. The ordinances will, however, cease to operate six weeks after the assembly of Parliament or earlier if resolutions disapproving them are passed by both Houses. The intention is to arm the Executive with sufficient powers in an emergency when Parliament is not sitting, not the setting up of a parallel legislature, which is what the Government of India Act of 1935 sought to do in Sections 42, 43 and 44. The last section enabled the Governor-General even to promulgate Acts which would have the same validity as Acts of the Legislature as regards matters which fell under his discretion or were subject to the exercise of his individual judgment.

Opposition to the article did not question the need for such powers but sought to restrict their scope. One amendment attempted to exclude the citizen's right to personal liberty from the scope of ordinance-making powers of the President while another wanted the ordinances to be placed before Parliament within four weeks of promulgation. Pandit Kunzru sought to limit the period of operation of these ordinances to 30 days. In seeking to provide against the possibility of the Executive unduly delaying the summoning of Parliament in order to prolong the period of effectiveness of such ordinances and in trying to restrict unduly the period of their validity, the danger of making the whole procedure ineffective for the object for which this provision is being made must not be forgotten. Possibly, it was this consideration which induced the Constituent Assembly to reject all the amendments and pass the article in its original form. But the criticism of the article in the Assembly is a warning to the Government not to have recourse to these powers unless there is a real emergency. The Executive should not get into the habit of considering these powers as normal methods of rectifying official negligence or administrative inefficiency. These powers were notoriously abused under the old regime and the attitude of the public now is a reaction to this misuse. In fact, these powers have been frequently used even by the National Government. If the liberal, democratic regime we want to establish is to become a reality, these powers should be used so sparingly that they may be allowed to fall into desuetude.

Incidentally, the President, Dr Rajendra Prasad, raised the issue whether there was any provision in the constitution making it obligatory on the President to act on the advice of his Ministers on all matters, and especially in using his ordinance-making powers. Dr Ambedkar in his reply pointed out that the President was expected ordinarily to act on the advice of his Ministers and if he did not he would be forced to find an alternative Ministry to enable him to carry on the administration. He also referred to the crucial words "in the exercise of his functions" in Article 61 to support his contention. The article itself merely says that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." While the arguments in favour of keeping the words in the Act flexible where the constitution is to be allowed to develop broadening down from precedent to precedent are sound within limits, the danger of a future President insisting on a strict interpretation of the wording of the Act and relegating the Ministers to the position of advisers whose counsel he may seek but not accept is not one to be lightheartedly ignored, especially in a country like ours where there is no common agreement about accepting the fundamentals of the constitution in playing the political game. If the constitution can provide for the joint responsibility of the Cabinet, there is no reason why it should not provide for the President always acting on the advice of his Ministers within the limits laid down by the Constitution Act. It is a matter which deserves more serious consideration and we hope the Drafting Committee will give the point raised by the President the attention it deserves.

State man 25-5-

SUPREME COURT JUDGES' AGE OF RETIREMENT

DEBATE IN CONSTITUENT ASSEMBLY

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Tuesday.—For three and a half hours this morning the Constituent Assembly was engaged in the discussion of an Article in the Draft Constitution relating to the appointment and removal of Judges of the Supreme Court.

Although the House agreed to the provision without any major change, the debate was full of interest, even the Prime Minister finding it necessary to intervene on the issue of a Judge's retiring age.

First on the list of controversial points was the procedure for appointment, a section of members being of the opinion that, except in his own case, the concurrence of the Chief Justice should be obtained by the President of the Republic.

A more radical view was expressed by others who preferred the association of Parliament with the task of selection on the ground that, in the matter of dismissal, the Article provided for such association.

There was a similar difference of opinion over the provision in the Article that a Judge could hold office until the age of 65, some members considering this too high and others being of the opinion that a Judgeship should be held for life.

Supporting the Article, Pandit Nehru deprecated the practice of fixing age limits for retirement in the services on a uniform pattern. He referred to a famous American Judge who had served till 92 and recalled his early days in Britain when members of the Privy Council had "white flowing beards".

Members of the Assembly also contradicted one another on the advisability of permitting Judges of the Supreme Court to accept employment during or after their term in the Court, the majority of speakers proving to be against such permission being given.

Speaking with some authority, a former Judge of the Patna High Court, Dr P. K. Sen, even suggested full pension for Judges who might be forced to retire before their term for reasons of health as such a provision would ensure greater independence among Judges.

Dr Sen later moved a new Article on these lines which was supported by another former High Court Judge, Bakshi Tek Chand. The official reaction to this, expressed by Dr Ambedkar, was acceptance of the principle that during his term of office a Judge should not be assigned non-judicial duties on a temporary basis.

Today's debate provided Mr H. V. Kamath with a reward for his persistent industry, an amendment moved by him to include "eminent jurists" among potential candidates for judgeship being accepted by the House.

(Agency report on page 7)

The Tribune

Ambala Cantt., May 26, 1949

ORDINANCE-MAKING POWER

The Indian Constituent Assembly debated on Monday the power of the President to promulgate ordinances during the recess of Parliament. This power is sought to be given to the President under Article 102. This article says that an ordinance promulgated by the President "shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of the period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions." The provision contained in this article is analogous to the provision contained in Section 42 of the Government of India Act, with this vital difference that while under Section 42 the Governor-General has been recognised as a legislative authority distinct from and not subject to the Legislature, the President will act under Article 102 in case of an emergency only if Parliament is not in session. While the majority of members recognised the need for vesting the President with the power of issuing an ordinance to meet a sudden emergency during the recess of Parliament, they wanted to limit the period of the operation of the ordinance to the minimum. Speakers like Pandit Kunzru were of the view that the period should be just sufficient to enable the Executive to summon Parliament and obtain its approval of the provisions of the ordinance if the emergency continues. The curtailment of time-limit will certainly act as a check on the President's ordinance-issuing emergent power. Dr. Ambedkar's position was that, unlike the Governor-General, the President would have no special responsibility, no discretion and no individual judgment and that, therefore, the question of the abuse of power conferred on him under Article 102 did not arise, especially because the power would be exercised only when Parliament would not be in session. People, who have ample experience of the ordinance rule under the British regime, are reluctant to allow any special powers to the Executive or the President in the new democratic set-up. If such powers are to be conferred on them in anticipation of an emergency, provision should be made to have extraordinary decrees approved by Parliament at the earliest possible time. This viewpoint was entirely ignored by the House adopting the article as it stood.

However, the most important constitutional point that emerged from the debate was concerning the position of the President vis-a-vis his Council of Ministers. The King in Britain is the constitutional head of the state; but he always acts on the advice of his ministers. Without his ministers he has no constitutional position. In India the President, it is stated, will also be the constitutional head of the state. But does the Constitution anywhere lay down that he is bound to act on and accept the advice of his Council of Ministers? Article 61, which is the only article on the subject, says: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Dr. Ambedkar, in reply to Dr. Rajendra Prashad's query, said that the words "in the exercise of his functions" in the article meant that the President could not exercise any of his functions without the aid and advice of his ministers. That is Dr. Ambedkar's interpretation. It may prove correct and the President may never act independently of his Ministers. But why should anything be left vague? Article 61 does not specifically say—though that may appear to be its meaning to students of constitution — that the President is bound to accept the advice of his Ministers. Cannot this ambiguity be removed from the constitution by making a specific provision to this effect? In India, democratic institutions have just begun to function and conventions are yet to grow. In order that these institutions should function smoothly in the democratic sense and conventions grow along healthy lines, we should try to be as precise and definite as possible in this matter. The President of the Constituent Assembly has drawn the attention of our constitutional experts to what is regarded in some quarters as a lacuna. Let them study the point carefully and remove the lacuna. The Constituent Assembly is still busy hammering out free India's constitution. It will be easier to remedy the defect now than when the constitution has taken a final shape.

RESERVATION OF SEATS FOR MINORITIES UNNECESSARY

(Continued from page 5 col. 5)

ters connected with life between one set of people and another. These differences were capable of adjustment not by ignoring them, but by keeping every section of the people satisfied. Unity did not mean regimented uniformity of all people. It would be a matter of dictation if one group of people was asked to give up a certain way of life. It would create a feeling of discontent and dissatisfaction.

A VIGOROUS SPEECH

Z.H. Lari Commends Proportional Representation

Mr. Z. H. Lari moved an amendment suggesting the system of cumulative votes in multi-member constituencies and the modification that no seats be reserved for the Scheduled Castes.

In a vigorous speech Mr. Lari defended this method of election as the only solution. He said that he concurred with the approach of the Committee. There should be no provision which would isolate one section of people from the main stream of public life. The minorities must aspire to become an integral part of the nation. They should claim only such safeguards as were consistent with this aspiration, calculated to give them an honoured place in the governance of the country not as a separate independent entity but as a welcome part of the organic whole.

Mr. Lari said that though the majority in the ultimate analysis should govern it was the right of every individual to have some voice in sending his representatives and selecting the Government to which he rendered obedience.

By the introduction of proportional representation, Parliament would have an opposition not on communal basis but on the basis of national issues. They would have a party in opposition which would be co-operating with it so far as the integrity and the prestige of the nation were concerned. It would be a vigorous and corrective opposition, conscious of the dignity of the nation. If they had objections to the cumulative votes, he had no objection to the system of single transferable vote but he would insist on proportional representation. Criticism that proportional representation was another form of separate electorate was unfair.

Referring to reservation for the Scheduled Castes, he said that if it was against national interest, it should not be given to them at all. The argument that Scheduled Castes were unanimous in their view on that point, did not hold good.

BHARGAVA'S AMENDMENT

Pandit Thakurdas Bhargava (East Punjab) moved an amendment to the effect that reservation of seats would last for a period of ten years from the commencement of the Constitution and would lapse automatically thereafter.

This was followed by discussion whether the amendment could be moved. The President, Dr. Rajendra Prasad, observed that Pandit Bhargava's amendment was not strictly an amendment to an amendment. It was an amendment to the original motion and sufficient notice had not been given for it.

The House then proceeded to general discussion of the motion and the amendments.

Mr. S. Nagappa, Harijan member from Madras, congratulated the Minorities Advisory Committee and its Chairman, Sardar Patel on their report, and said they had achieved what had not been achieved during two centuries of British rule. Mahatma Gandhi had given social and political freedom to the Harijans. Without the co-operation of Harijans, Congress would not have achieved freedom and Harijans had a right to share in the rule of the country.

The Scheduled Castes were now getting reservation even though they were not asking for it. When the majority was offering a helping hand, why should the Scheduled Castes reject it, he asked.

Mr. Nagappa added that he was prepared to accept abolition of reservation of seats for his community, provided every member of that community was given ten acres of land to cultivate and his children educated up to University standard.

Mr. Naziruddin Ahmed (West Bengal) said that the resolution moved by Sardar Patel was an important landmark in the history of this country and that he was in complete agreement with the resolution.

He said that reservation of seats was introduced when the communal situation was unsatisfactory. But now the situation had considerably improved and there was harmony between Hindus and Muslims. If Muslims asked for reservation, Mr. Naziruddin Ahmed continued, the present harmonious relations between the two communities would deteriorate. Referring to Mr. Lari's amendment for introduction of a cumulative system of voting, Mr. Naziruddin Ahmed said Mr. Lari's argument was based on European practices. It was not suited to Indian conditions and would be very difficult to work.

Mr. Naziruddin Ahmed asked Muslims to have a progressive outlook and declared that religion had nothing to do with politics.

SECULAR STATE

No Religious Minorities Can Be Recognized

Dr. H. C. Mookerjee, Indian Christian leader from West Bengal and Vice-President of the Constituent Assembly, said that under a secular State no minorities on a religious basis could be recognised. There were some groups economically backward who required economic safeguards, but he could not see why they should be given political safeguards. The chapter on Fundamental Rights which had been adopted by the House would secure all rights to every citizen. He hoped the House would accept Pandit Thakurdas Bhargava's amendment that reservation for the Scheduled Classes should have a definite time-limit.

The masses, Mr. Mookerjee continued, did not want reservation. What they wanted was food, clothing, shelter, medical aid and good roads. In his opinion the Scheduled Castes did not require reservation but he was prepared to submit to the wisdom of the leaders who had provided for it.

The majority community had been very generous to every minority community, he said. When he was presiding over the sessions of the Constituent Assembly for some weeks, foreign observers, including journalists, were impressed by the opportunity given to members of the Scheduled Castes to express their views.

The attitude of the minorities had not been very helpful in the past. They had used "backdoor methods" to sabotage the national movement. If the minorities wanted to live in harmony, they should trust the majority.

WHOLEHEARTED SUPPORT

Begum Aizaz Rasul (United Provinces) said that she "whole-heartedly" supported Sardar Patel's motion and added, "I know that the Muslims of the United Provinces are absolutely behind me in this matter."

Opposing Mr. Ismail's amendment, Begum Rasul said that in a secular State joint electorates were absolutely necessary and when the principle of joint electorates was accepted, the reservation of seats for minorities was meaningless and useless. "To my mind", she said, "it is a self-destructive weapon which isolates the minority from the majority."

There was some fear in the minds of the Muslims that without reservation they would be unable to get their due share of representation in legislatures on the basis of their population. That fear, she was confident, was "baseless" because "if we accept the word of the majority community on its honour, the minority community will get not only the number of seats it is entitled to according to its population but perhaps a greater number."

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ASSEMBLY DISCUSSES MINORITIES COMMITTEE'S REPORT

Muslim Members Divided On Desirability Of Abolishing Communal Reservation

NEW DELHI, Wednesday.—The Constituent Assembly of India today considered the recommendation of the Advisory Committee to abolish reservation of seats in Legislatures for minorities except for Hindu and Sikh Scheduled Castes.

Pandit Thakurdas Bhargava (East Punjab) moved an amendment to the effect that reservation of seats should automatically cease after ten years. Mr. Mohd. Ismail (Madras) moved an amendment seeking to continue separate electorates for the minorities while another Muslim member, Mr. Z. H. Lari (U.P.), moved an amendment to introduce the system of cumulative votes in multi-member constituencies.

Sardar Patel, Chairman of the Advisory Committee, who initiated the debate, appealed to the majority community to be generous to the minorities and to the minorities to forget the past. He said that the concession to the Sikhs was "not a good concession" in the interests of the Sikhs themselves but till the Sikhs were convinced that this was wrong, he would allow them to have it.

Among those who supported Sardar Patel's motion were Mr. Nazirudin Ahmed (West Bengal), Begum Aizaz Rasool (U.P.), Dr. H. C. Mookerjee and Rev. Jerome D'Souza, Indian Christian leaders, and Mr. S. Nagappa, Harijan representative from Madras.

Mr. Syed Muhammad Saadaullah (Assam), who pleaded for continuance of reservation for Muslims, said that of the four Muslim members present at the last meeting of the Advisory Committee, only one Muslim member, Begum Aizaz Rasool, supported abolition of reservation. Another Muslim member had opposed abolition while Maulana Abul Kalam Azad and Maulana Hifzur Rahman, according to Mr. Saadaullah, had remained neutral.

The Advisory Committee's proposals do not affect the recommendations of sub-committees with regard to representation of tribals in the Legislatures and the special provision made for the representation of Anglo-Indians.

An attempt to move closure at 11-40 a.m. failed, as many more members desired to speak. The debate will be concluded tomorrow.

DETAILS OF PROCEEDINGS

Sardar Vallabhbhai Patel, Chairman of the Advisory Committee, today initiated the debate in the Constituent Assembly on the Committee's recommendation that the system of reservation in Legislatures for minorities other than Scheduled Castes and a section of Sikhs to be included in the Scheduled Castes list be abolished.

Sardar Patel appealed to both the majority and minority communities to rise to the occasion "In the long run", he said, "it would be in the interests of all to forget that there is anything like majority or minority in this country and to realise that in India there is only one community".

Sardar Patel recalled that on August 8 a report was submitted to the Advisory Committee advising the House to adopt certain political safeguards for minorities by way of reservation of seats in the Legislature on a population basis and also certain other safeguards. When this report was made, Sardar Patel said, conditions were different and the effect of Partition was not fully appreciated. Even then there were differences of opinion. One group of people of highly nationalistic tendency led by Dr. H. C. Mookerjee, Vice-Chairman of this House, from the beginning opposed such reservation in the Constitution. Rajkumari Amrit Kaur also at that time stoutly opposed these reservations but the minorities then were apprehensive about stating the quantum of representation due to them on a population basis, and the Advisory Committee, in spite of the difference of opinion, thought it necessary to allay the apprehensions of the minorities at that time.

POCKER—THE NO-CHANGER

Sardar Patel said, "The House will also recall that a representative of Muslims in South India, Mr. Pocker, the no-changer and a confirmed Muslim Leaguer, then proposed an amendment for introducing or continuing separate electorates, the effects of which have been fully known in this country and perhaps even outside. My proposals as chairman of the Advisory Committee were then accepted by the House practically unanimously and a general sense of appreciation was expressed by the minorities".

The proposals of the Advisory Committee, Sardar Patel said, were then incomplete insofar as East Punjab and West Bengal were concerned and at its meeting on February 24, 1948, the Committee appointed a special sub-committee consisting of Sardar Patel (chairman), Pandit Nehru, Dr. Rajendra Prasad, Mr. K. M. Munshi and Dr. B. R. Ambedkar to report on minority problems affecting East Punjab and West Bengal.

The report of this special sub-committee came up for consideration before the Advisory Committee on December 20, 1948, but the Sikhs wanted time to consider the report and consult their community. Some of the Muslim representatives had changed their opinion since August 1947 and they put forward the plea that all reservation must disappear in the interests of the minorities themselves. This view was strongly pressed by a representative from Bihar and supported by others. There was then a little difference of opinion. "I was anxious and so was the Committee," said Sardar Patel, "that we should do nothing to take a snatch vote on a question of such vast importance. And if the Sikh representatives wanted time to consider their position, we naturally adjourned the meeting and met again earlier this month."

CONSIDERABLE CHANGE

H. C. Mukerjee Proposes Rejection Of Reservation

Describing the meeting of the Advisory Committee on May 11, Sardar Patel said, "When we met this time, we found a considerable change in the attitude of the minorities themselves. Dr. H. C. Mookerjee moved a motion for dropping reservation of seats in the Legislatures on a population basis. Mr. Muniswami Pillai, who was representing the Scheduled Castes, moved an amendment to the effect that reservation for Scheduled Castes might be continued for a period of ten years. The general opinion in the Advisory Committee was almost unanimously in favour of Mr. Pillai's amendment. The Sikh representatives brought in a proposal which to a certain extent was an improvement on the previous position and whatever might be the object of that proposal, the Advisory Committee thought fit to give due consideration to it, because members of that Committee had always felt a sort of responsibility for the susceptibilities and sentiments of the Sikh community which has suffered vastly by the partition of the Punjab. After a full debate, the Committee came to the conclusion that the Sikh proposal to fall in line with the dropping of the reservation clause, although linked with another proposal which in effect gave them a sort of reservation on certain conditions, was a great improvement".

The proposal to drop reservation, said Sardar Patel, was adopted by the committee with only one vote against the proposal out of a strength of 40 members who attended that meeting. So the Committee decided to advise the House to reconsider the proposals accepted in August 1947 and accept a proposal which was consistent with the proclaimed principles of the Assembly, namely the establishment of a genuine democratic State based purely on nationalistic principles.

SIKHS' DEMAND

Advisory Body's Principles Not Violated

Referring to the proposal to place certain categories of Sikhs in the listed Scheduled Castes, Sardar Patel said, "this in effect does not really differ from the principles laid down by the Advisory Committee. The Sikhs contended that certain classes of people amongst them, who have been recent converts and who were originally Scheduled Caste Hindus, are suffering from the same disabilities as the Scheduled Castes.

"As a matter of fact, these converts are not Scheduled Castes or ought not to be Scheduled Castes because in the Sikh religion there is no such thing as untouchability or any classification or difference of classes. But as unfortunately in this country the Hindu religion was suffering from the evil effects of certain customs and prejudices, that have crept into society, so also the reformed community of the Hindus, called the Sikhs, have also in course of time suffered from degeneration to a certain extent. They are suffering from a complex called the fear complex. They feel that if these Scheduled Castes who have been converted to Sikhism are not given the same benefits as the Scheduled Castes have been given, there is a possibility of their reverting to and merging with the Hindu Scheduled Castes.

"So the House will realise—and I propose to consider this from the House—that religion is merely a cloak or cover for political purposes. It is not really the Sikh religion which can recognise this class of distinction; but Sikhs today should be recognised as having suffered from various causes and we have to regard with considerable tenderness the feeling their existing state of mind.

"When this proposal was brought to us, in fact, I advised them strongly not to lower their religion to such a pitch as to fall to a level where for a mess of pottage you really give up the substance of religion. But they did not agree and, therefore, the utmost that we could do was to advise those who were wanting these safeguards to go into the classification of Scheduled Castes. They have agreed to be lumped into the Scheduled Castes. It is not a very good thing to do for the Sikh community. Yet they want it and we feel that for the time being we should make that allowance for them.

"Theoretically, the position is logically correct. They are all Scheduled Castes but Sikhs may call them Scheduled Caste Sikhs".

Sardar Patel said that the inclusion of some of the Sikhs in the Scheduled Castes list was, however, stoutly opposed by Scheduled Castes representatives who also had "a justified fear complex that if the House accepts this position there is really a danger of conversion from their class to the Scheduled Castes Sikhs".

Sardar Patel went on, "Our object should be as soon as possible and as rapidly as possible to drop these classifications and differences and bring all to a level of equality".

The majority community, said Sardar Patel, should treat the minorities generously and create a sense of confidence in them while it would be the duty of the minority communities to forget the past and to reflect on what the country had suffered due to the class and communal divisions and sub-divisions which the foreigners "in their sense of fairness thought fit to create".

Sardar Patel appealed to the House and particularly to the Scheduled Castes, not to resent or to grudge the concession that was made to the Sikhs. "It is not a good concession in the interests of the Sikhs themselves", said Sardar Patel, "but till the Sikhs are convinced that this is wrong, I would allow them to have it consistent with what we think to be our principles of just dealing."

MOTION OPPOSED

Nawab Ismail Raises Point Of Order

Nawab Mohammad Ismail asked the President whether the whole question of how the minorities were to be represented in the Legislature could be discussed.

Mr. Mahabir Tyagi felt that no amendment could be moved as the motion was only for the consideration and adoption of a report which would not form part of the Draft Constitution.

Dr. Rajendra Prasad explained that if the House accepted the report then necessary amendments to the Draft Constitution would be introduced at a later stage. Because the report had made certain changes in regard to some decisions taken by the Assembly, amendments relating to those changes could be moved.

Nawab Mohammad Ismail argued that since reservation for the minorities which had already been decided upon was sought to be done way with, it reopened the whole question of how the minorities should be elected to the Legislature.

Mr. Mohammad Ismail (Madras) then moved his amendment for the retention of separate electorate.

Mr. Jaspatrai Kapur raised a point of order that according to Rule 32 of the Constituent Assembly, no question which had been decided upon could be reopened unless one-fourth of the members present agreed to its reconsideration. The House had already decided that there should be joint electorate and not separate electorate.

ANOTHER POINT OF ORDER

Prof. Shibbanlal Saksena raised another point of order, stating that the amendment was a complete negation of the motion. A member could oppose a motion but could not move an amendment rejecting it.

Mr. Z. H. Lari said that the motion moved by Sardar Patel has reopened the question of representation of minorities and political safeguards. If the House had agreed to take into consideration the question of political safeguards for minorities then it was open to members to move amendments relating to those safeguards.

Mr. Mahabir Tyagi agreed with Mr. Lari and said that the objection raised by Mr. Kapoor equally applied to the motion moved by Sardar Patel. The question of separate electorate was a very important one. The people who wanted it must be given the fullest opportunity to express their views and the question must be debated by the House which should give a clear and final mandate on this question.

Dr. Rajendra Prasad ruled out both the points. He held that the motion had reopened the question and therefore an amendment to it was also opened to discussion. As regards the second point the President ruled that the amendment was not a negation of the motion. Another method of representation was suggested.

NEW CONDITIONS

Muslims Need Separate Electorates

Mr. Mohammad Ismail said that he had no objection whatever to the Committee reopening the subject. He only wanted that the question of minorities and their political safeguards might be placed before the House once again when it was engaged in the final stage of passing the Constitution. He said that the conditions had changed since August, 1947. Suspicion, doubts and prejudices that were entertained had been disproved and the Muslims had demonstrated that those suspicions were unfounded and unwarranted. They had proved that they were in the forefront in the defence of the country, upholding the honour of the motherland. It showed that the Muslims were frank and open-hearted people. They meant what they said. They had proved what they had all along been saying that they were as much loyal citizens of the motherland as any other section of the people. Pandit Nehru, Sardar Patel and some others were imbued with a high sense of generosity and justice but it could not be said that every part or personnel of the Government would always be imbued with the same sense of justice. Things might happen which would lead to disappointment and dissatisfaction to a certain section of the people. How could they bring them to the notice of the Government except through their representatives.

The Committee had stated that it was satisfied that the minorities themselves felt that statutory reservations of seats should be abolished. He did not know how the Committee came to be satisfied in that manner. "I assert here and say definitely", said Mr. Ismail "that the Muslims as a community are not for giving up reservation. They would prefer the House to retain separate electorate which alone will give us the right sort of representation in the Legislature."

Defending the system of separate electorate, Mr. Ismail said that there were differences in outlook in mat-

(Continued On Page 7 Col 3)

India news chronicle 26.5.

CONSTITUENT ASSEMBLY DISCUSSES MINORITIES COMMITTEE'S REPORT

(By Our Special Correspondent)

NEW DELHI, Wednesday.—The Constituent Assembly today began discussion on a proposal to abolish reservation of seats for all except Scheduled Castes. The proposal, which has been made by the Advisory Committee on Minorities and was placed before the House by the President of the Committee, Sardar Patel, received such a weight of support that it is expected to be passed by an overwhelming majority when the debate concludes tomorrow.

Opposition today came from one Muslim member, Mr. Mohammed Ismail (Madras), who by an amendment wanted not only retention of reservation for Muslims and other minorities but insisted on a revival of separate electorate, which had been given up as an earlier stage of constitution-making. Three other Muslim speakers of the day—Mr. Z. H. Lari, and Begum Aizaz Rasool from U.P. and Mr. Nasiruddin from Bengal—unreservedly opposed him. Mr. Lari, however, suggested a system of cumulative votes in multi-chamber constituencies as an alternative to reservation, and asked that reservation should be abolished in the case of Scheduled Castes also

Mr. Mohammed Saadullah (Assam), the fifth Muslim speaker of the day while expressing personal opposition to reservation, said that taking the country as a whole Muslims desired its continuance for a limited period

Representatives of the Christian community, Dr. H. C. Mookerjee, Vice President, Constituent Assembly, and Father DeSouza were powerful supporters of Sardar Patel's motion. Mr Nagappa, speaking for Scheduled Castes, vigorously defended it, but declared:—"I am prepared to give up reservation if every Harijan is given 10 acres of wet land, 20 acres of dry land and free education to every Harijan child up to the University standard."

Sardar Patel, opening the debate gave a history of the decision taken by the Advisory Committee and expressed the hope that the step proposed would in time lead to a complete end of all ideas of majority and minority and help the evolution of a single community in the whole of India.

Tomorrow after disposing of the Sardar Patel's motion, the House will take up Mr. Gopalaswami Ayyangar's motion that the seats in the Constituent Assembly allotted to Jammu and Kashmir be filled by nomination by the Ruler on the advice of the Prime Minister.

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RESERVATION OF SEATS

A Press agency report from New Delhi, dated May 24, states that "the Congress Party in the Constituent Assembly at a meeting this evening approved the report of the Minorities Advisory Committee recommending abolition of reservation of seats on religious grounds in the Legislature for minorities other than Scheduled Castes". As the Congress Party constitutes the largest group in the Constituent Assembly of India, the former's decision to support the Minority Advisory Committee's recommendation to retain the system of reservation of seats for Scheduled Castes will smooth the passage of Sardar Patel's resolution on the reservation of seats for the Scheduled Castes. But will such reservation of seats in Legislatures for any section of the people be in the larger interest of Indian nationalism and in harmony with the ideal of a secular and democratic State? The Minority Committee's theory that the Scheduled Castes required special treatment in view of their general backwardness in political, educational and economic spheres loses much of its force as a result of the introduction of adult suffrage. There might have been some justification for special treatment of the so-called Scheduled Castes if the right of franchise and fitness of candidature for election to the Legislature were regulated, as of old, by property and similar qualifications. As every adult, unless he be of unsound mind, will be eligible for exercising the right of voting and standing as candidates for election to the Legislature, backwardness of the Scheduled Castes in educational and economic spheres can be no valid argument for extending special treatment to them, be it for 10 years or even less. Having agreed to draw the Indian Constitution on a secular and democratic basis, the Constituent Assembly has no moral justification for departing from the fundamental principle of the Constitution.

The immediate reaction of the unwise policy of the Constituent Assembly is to be found in the notice of amendments given by some Muslim members of the House seeking to retain the principle of reservation of seats on population basis for the Muslim and other minorities in Central and Provincial Legislatures of the country. Thus, the Muslim members, taking advantage of the weakness and unwisdom of the Congress Party in the Constituent Assembly, want to revert to the old system which British imperialism introduced for perpetuation of its unholy domination over this country. Nothing wrought greater havoc in India than the system of communal and separate electorates which British imperialists introduced with the passive support of the Congress. Had the Congress stood resolutely against the communal electorates introduced by Morley–Minto Reforms and had not adopted a negative attitude towards the "Communal Award" of Mr. Ramsay MacDonald, there would have been no division of India and subdivision of Provinces with all its attendant horrors bringing ruin and misery to millions of Indians. The evil effect of communal electorates culminating in the "two nation" theory of Mr. Jinnah will be felt in India for generations. The Congress seems to have deluded itself into the belief that as it is going to eliminate communal electorates, mere reservation of seats for the Scheduled Castes for 10 years will not be so very harmful. It forgets that an evil should always be nipped in the bud. A poison tree once nurtured cannot be easily uprooted. The phrase "Scheduled Castes" was an invention of British imperialism. Free India should have eliminated the phrase from political vocabulary.

Public opinion happens to be as much opposed to the principle of reservation of seats as it is to communal electorates. Poison deliberately injected into the body politic in India by our foreign rulers must be wholly eliminated to ensure its healthy growth. While the Muslim members' demand should receive no encouragement, it will be equally a blunder to treat the "Scheduled Castes" as deserving of any special treatment. Any distinction, whether of creed or caste, should not be introduced in political or economic sphere. While every effort should be made to remove the economic and educational "backwardness" of the Scheduled Castes, they should be treated as an integral part of the great Hindu community. By reservation of seats in the Legislatures for any section of the people, the Constituent Assembly will be falling into imperialist trap and will be arresting India's march to the goal of one and undivided nation. The whole fabric of India as a secular and democratic State will be weakened by extension of special treatment to any section of the people.

RESERVATION

(Continued from Page 1)

tan. After this could anyone blame the majority community for changing its attitude? Mr. Sidhwa added he had no doubt that a large number of Muslim candidates would be returned to legislatures under the system of joint electorates. The majority community, however, would not support those Muslims who still believed in the two-nation theory.

CUMULATIVE VOTING UNDEMOCRATIC

Prof. Shibnandai Saxena (U.P.) said that he had tried to find out how the introduction of cumulative voting system would work out and came to the conclusion that it would not secure for the minorities adequate representation. This system was also undemocratic because it gave one man power to pool all his votes, instead of giving every man one vote. He wished, however, that it were given a trial since the Indian electorate was not sufficiently educated at the present moment to try it out.

Sardar Hukam Singh (East Punjab) said he gave wholehearted support to the resolution. Separate electorates had been given a long trial and the system had created cleavage among the communities.

The method of cumulative voting suggested by Mr. Lal was a wholesome measure but in a country like India where 90 per cent of the electorate was illiterate, it would be very difficult to work.

Saying that the safety of the minorities lay in a secular state, Sardar Hukam Singh added that Sikhs had been committed to the goal of one nation. The Sikhs, however, had certain fears as regards their language and employment in the services. He knew these fears could be removed by the executive. The minority must not be said that certain matters could be left to be decided by conventions.

Referring to the observation of Sardar Patel that the grant of reservation of seats to certain classes of Sikhs was a "concession" to the Sikhs, he said he could not be treated as such. Scheduled Castes and Hindus had been given reservation of seats because they were backward socially, economically and politically, and not because they were a religious community. Moreover certain classes among the Sikhs had been included among the scheduled castes because they were also backward. The Sikhs were, however, grateful for this provision and they were prepared to march shoulder to shoulder with other communities to achieve the goal of one nation.

NAWAB ISMAIL'S SUPPORT

Nawab Ismail U. P. also gave unstinted support" to the resolution of the Advisory Committee. "The reservation of seats", said Nawab Ismail, "is detrimental to the growth of communalism and is not an effective safeguard for the Muslim minority as many other minorities. I congratulate the minority community with its safeguards. There are a number of votes for not utilising the device for its own purpose. He felt that separate electorates were inconsistent with a democratic Government. The best minds of the Muslims had been thinking for a long time that with the inauguration of responsible Government, separate electorates would be harmful. At the time when the separate electorate system was claimed there was no direct election, and there was no responsible safeguard. With responsible Government functioning, those who were elected through the separate electorate system were doomed to remain in opposition always. He pointed out that at a meeting of some of the Muslim members of the Constituent Assembly, it was decided to do away with reservation of seats in accordance with that decision, Begum Aizaz Rasul had cast from the platform a long time demand for the separate electorate system by the Muslim members from Madras. Nawab Ismail said that fundamental rights of citizens had been provided for in the constitution and they could vindicate their rights before the Supreme Court which he felt was a much better safeguard than legislature, where party feelings might run high. Muslims were prepared to give up separate electorates 20 years ago, provided safeguards were then given. To-day the conditions were different and they had statutory safeguards. Why then should they demand separate electorate? How would it help them? Communal organisations would have to go up candidates and it would not lead to a harmonious working with the majority. The best thing for the Muslims to do was to trust the majority. If the Muslims wanted India to be a secular and non-communal state, they should not stand in the way of its emergence as such. (Loud cheers).

Mr. Anthony paid a tribute to Sardar Patel whose attitude during the deliberations of the committee, he said, had been inspired by an attempt to understand the real feeling and psychology of the minorities. Sardar Patel felt that if there was fear, real or imaginary, it was better in the larger interest of the country to assuage that and look at it from the point of view of the minorities.

While appreciating the reports reached by the Advisory Committee, they were the result of unanimous agreement. They were not imposed decisions but were based on friendly understanding, compromise and faith.

He strongly denied the suggestion that the minorities were segregated in India and that their representatives were subjected to a sense of fear or regimentation. He added, "I have not suffered from any sense of fear or regimentation. The minority representatives are not stooges of any particular party. When we say that we will be responsible to the party we mean it. It is not the regimentation or fear which provoked us to say so.

He said the real guarantee for the minority of equality of opportunity was the establishment of a secular state.

PANDIT NEHRU'S SPEECH

Pandit Jawaharlal Nehru, today described as "historic" Sardar Patel's motion in the Constituent Assembly for abolition of reservation of seats to minorities, except the scheduled castes.

Intervening in the debate, Pandit Nehru said, "There has been such abundance of goodwill shown behind this motion that it is hardly necessary for me to intervene in support of it, but I felt the urge to do so. I think it is right that I associate myself with this motion and destiny of India.

It is a motion which means not only goodwill but generosity. It is a step in turning back upon it and determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation.

If one may say so, I am convinced that this business of separatism, whether it be in the form of separate electorates or other shapes, has done a tremendous deal of evil to our country and to our people.

We came to the conclusion sometime back that we must get rid of the system of separate electorates. That was the major evil. Reluctantly we decided to carry on with some measure of reservation. Reluctantly we did that.

Firstly, we felt that we could not remove that without the goodwill of the minorities concerned. Secondly, for them to take the lead or to say that they did not want it. That would be to cut the ground down their throats would not be fair to the country. Thirdly, we have given in the past and, otherwise too, we did not look right thing to do.

Secondly, I repeat that reservation because in our hearts of hearts we were not sure of ourselves and of our social people. How would they function when all the restrictions were removed? We agreed to reservations but always there was this doubt in our minds whether we had not shown weakness in dealing with a thing that was wrong. So when this matter came before the Constituent and it was proposed that we do away with all reservations except in the case of the scheduled classes, for my part I accepted it with alacrity and with a feeling of relief. I thought that I was fighting for in my own mind and heart against this weakness which had led to reservation and separatism in our political domain.

Continuing, Pandit Nehru said, "We all call ourselves nationalists but perhaps in our minds each the colour and texture of nationalism is different. It is some what different from the mind of other. We are nationalists but slightly so and yet few of us are free from those elements which are called communal, whether they are provincial or communal. Therefore, followed, added the cloak of nationalism to cover those bad tendencies.

"So I thought about the matter and came to the conclusion", said Pandit Nehru, "that if at this stage of our nation's history when we are formulating our constitution—when we are in a very permanent thing because the world is changing, but nevertheless we wish it to be fairly lasting—we do a thing which psychologically is wrong. It will not help make people look the wrong way it would be an evil thing for the nation. We decided sometime ago that we should have no truck with communalism or separatism. It was rightly pointed out to us that if it is so, why you keep reservation because this will make people look at separate compartments in the political domain.

Asking the members to consider objectively whether there is some point in continuing safeguard of this type or any other type, whether there is democratic rule or foreign rule, Pandit Nehru said: "As soon as you get somebody say that can be called political democracy then this kind of reservation instead of helping the parties is likely to actually turn against its entirely different from the problems of five years ago in my domain, whether it is political or economic.

"Therefore the doing away with this business of reservation", he added, is a good thing in itself, good for all concerned, more particularly the minority. It shows that we are really sincere about having a secular democracy."

Pandit Nehru said: The term secular democracy is used by people who do not understand it in significance. It is not a term like Hindu or Muslim or Sikh or christian. We stand where we are—that is not prejudiced, that no taint of communalism is there in the mind and heart. Some times I have to say that, because we are all product of the past.

"I do not myself particularly fancy any one of us trying to deliver sermons and admonitions to the other as to how he should behave, or one group telling the other, because it is the minority group which is the majority. You should do this or that', or the majority telling the minority. You should do this or that' to gain our goodwill or confidence.

Of course something has to be done to gain goodwill but goodwill or loyalty or affection is a thing which is not to be achieved by sermonising. It develops because of certain psychological appeals of the mind and heart and the realisation of what is right and wrong. Therefore this motion is going to take a major decision which will affect our future greatly, let us be clear in our minds about it. We are not asking for other, each one of us, whether belonging to the majority community or minority, to function in a way to gain the goodwill of the other group or other groups.

Pandit Nehru said that Mahatma Gandhi stressed the good in every individual or group and that was the way in which he made him function to the best of his ability. That was the way in which he was evil but Anthony had reminded the House that the Mahatma had given an act with for all particularly for the majority community because it was here to have to behave towards others in a generous way.

"Let us live up to this faith", said Pandit Nehru in conclusion.

Mr. Talamul Husain excending his whole-hearted support to the motion said that there was no reservation of seats in the communities in any civilised country with a democratic parliamentary system.

He characterised "reservation of seats" and "separate electorate" as nothing but different names for the same thing. Under the undeserving candidates were thrust on an unwilling community. The minorities in the country did not want such protection and did not want to thrust themselves on an unwilling community. Reservation of seats had been a British creation intended for establishing their hold on India. Those who were Indians first and last and they loved India with heart and soul and the country. They were opposed to any such move which meant ultimate division of the people.

Mr. Hussain said with the departure of the British the whole mind of the majority community in this country. He appealed to the minorities in all sincerity to accept the motion.

SIKHS & SCHEDULED CASTES

Mr. Phadke said that he was of opinion that even the scheduled castes did not need such safeguards. But for them he could he given this special treatment because of the backwardness and social conditions under which they were living. They were not receiving as many facilities as they ought to from the Provincial Governments. But, Mr. Phadke said, he had faith in the future. He hoped that they remove all such difficulties in course of time. He, therefore, supported the spirit of the motion.

Sardar Sucher Singh also supported the motion. He said that the Sikhs as a community did not favour reservation of seats for them. They were prepared to stand or fall in secular democracy and were standing shoulder to shoulder with representatives of other communities in India for achieving this end. Sikhs were a martial, hard-working, enterprising and hard-working people. He was glad that leaders of India like Sardar Patel and Pandit Jawaharlal Nehru were trying to do the social justice by a proper distribution of the burdens and responsibilities.

In their constitution, Sardar Sucher singh added, they had provided for equal opportunity for all classes of people. In these circumstances, the Sikhs were fully prepared to throw their lot with Hindus, Parsis, Muslims, Christians and others for the welfare of the country as a whole.

SARDAR PATEL'S MOVE

Maulana Hazrat Mohani entirely supported Sardar Patel's resolution. He said that he was opposing the principle of reservation of seats for minorities even at the time when the Congress party was in favour of such a system. Muslims, he said, did not want any reservation of seats as a matter of concession. They were prepared to work together in a democratic way with the Hindus for the future well-being of India.

Referring to the amendments that had been moved by some of the Muslim members from the south, Maulana Hazrat Mohani said that it was an attempt to

not at all entertain any fears or suspicions regarding their future interests if they trusted the majority community. It was only by such trust that they could contribute their due share to the future shape of democratic India.

PATEL'S FINAL APPEAL

Winding up the debate Sardar Patel amidst cheers said: "With the blessing of God today' we are laying the foundation of a true secular democratic state where minorities will have equal chance."

Sardar Patel said: "When I was appointed chairman of the committee, I was really trembling. I took up the job with a heavy heart because I felt that the task was immensely difficult owing to the history of the past many years. But I thought I took up that job at a time when the conditions in this country were difficult, all difficult, and when people were full of suspicion and there was hardly any trust among every section of the people. Yet I could see that immediately after power was transferred to the people the situation began to take place and it gave me considerable encouragement.

At the first meeting of the committee, Sardar Patel revealed that they agreed to give political safeguards by way of reservation to the minorities. When the Muslim League left the House there was a difference of opinion whether reservation should be given to all minded leaders, such as Dr. H. C. Mookerjee, who from the beginning opposed reservation in principle.

I am sure he will be happy that his advice is being followed. Then there was another group of people who found it difficult to get out of the rut in which they had gone very deeply. A proposal was brought in by a friend from Madras to abolish reservation for the maintenance of communal electorate. That motion was opposed by a part of Muslim League leader who swore loyalty to the constitution of the House and immediately after went out. That is the part I am carrying on the work of the Muslim League. I am here and I am here to stay here and his mantle had fallen on our Madras friend.

MUSLIM LEAGUES LEGACY

Sardar Patel referred to the activity of Muslim leaders who had left India. He said it there was a vast fund of the All-India Muslim League, it was for the benefit of all, and some people thought that these would go away with the amount and that was carried on its work. I do not think that money will do good to them. I appeal to those who have left India to come back. I have the idea that we worked for it and we got it. Those who have gone there should follow the same path to go and enjoy the fruits of that freedom and leave us in peace.

There is no place here in this country for those who are disloyal to the constitution. Separate electorate, when it was granted, was granted to Muslims as a dividend not on account of the demands of those who had it put it was a "command performance" by the country. The country once had fulfilled that task and we all should enjoy the fruits of it. This is the first time in this country since that day.

I want the consent of this House and the consent of all the minorities to declare the end of history. (Cheers). You have the honour and privilege to do it. The Constituent Assembly will write in golden letters the performances that you are doing here. I hope and trust that when we look back we will look back on a step which will chance the face of history. It will be a turning point in our country. (cheers).

ADVICE TO COMMUNALISTS

Speaking on the amendment moved by Mr. Ismail, Sardar Patel said that a similar amendment was moved in the Assembly and was rejected during the August session of 1947. They thought of bringing in that amendment again.

"I don't know whether there has been any change in their mind. If you think you have an interest different from that of our country, you are greatly mistaken. Here ministries and governments are responsible to the people. Those people who do not trust yourself and remain perpetually in minority.

You will realise it is some third power which will use its influence and create the minority atmosphere and will compel the majority to take one or two ministers. That is a wrong conception. That conception must be washed away.

Here we are a free country; here we are a free sovereign state, free to mould our future as we liked. Therefore, please forget the past. Please look to the future. If it is impossible, then the best place for you is where you came from and your ideas could be suited. I do not want to harm the poor Muslim mass who have suffered much. Whatever may be your claim and credit for having a separate state and homeland, please do not make the Muslim masses suffered.

"I remember that the friend who moved the motion last time said that the Muslims today were very strong and well-organised minority. Very good. The minorities in the country are in your hands. Please treat them. He said he was not enamoured of reservation. According to the Muslims of Assam do not want reservation. Then who wants it? The majority of the Muslim members were against reservation, he would accept their opinion. He has heard the opinion of the Muslim in the House. Let him change his opinion".

Referring to Mr. Lal's amendment, Sardar Patel said he was told that Mr. Lal had submitted his scheme. His approach was right, there was no question of the committee making a wrong approach because the leadership and the decision was left to the minorities. In support of his contention for a proportional representation Mr. Lael had quoted the instance of Ireland. But Ireland was a small single city state. Part of the United Province India was a country and even the introduction of adult franchise in that country there was a very difficult task. To introduce complicated system suggested by Mr. Lal would be a "very dangerous experiment." If Mr. Lal thought that the experiment was bad, he should not try to bring it back by the back door.

Sardar Patel said that in the changed atmosphere minorities would get even more than their due share of representation under joint electorates. This was proved only a month ago when the Bombay local municipal elections several ex-leagures who fought under the Congress ticket won, while the scheduled castes secured not even their quota.

PLIGHT OF SCHEDULED CASTES

Addressing himself to the Sikhs, Sardar Patel said he had always said the Sikh problem was a problem of the sword and termination. He had been their friend even through thick and thin and he would back their claims. He would give them reservation and should advise the Muslim minorities to agree to it but he felt that that was not in their interest.

Replying to Sikhs had a Sanjit Singh, whereas the scheduled castes had no prince did not have any. He said that he had told them that the scheduled castes got poor treatment from the Provincial Governments. Dust as they are! What is their position today inspite of all the talk in the House and the promised members of the scheduled caste community, he added, had been convicted in the Nizam's State, Hyderabad. The reason that made them unpopular was that they were afraid of their past association with the Congress and that they would be safe if they changed their opinion.

Asking the question whether any of the members had been appointed an hour in a scheduled caste sweeper's house Sardar Patel said that was the state in the place which they can call their home. Mr. Ambedkar had been elected a member her from Madras said that India is his. I am proud of it, but what about the poor people who have no protection? Have they not safe yet under our protection. Those who were in the Congress Camp Poona Pact. Have we fulfilled that? We have appointed officers in different parts of them in other parts of the country should use reference is to Pakistan, want to come back they are not allowed to return. Unfortunately we are not able to help them. That is the position of the scheduled castes".

About the Sikhs who waited reservation did not suffer from the difficulties felt by the scheduled castes.

Underlining that would wreck and undermine the cause of the Sikhs Sardar Patel said: "I am not going to quarrel. If a quarrel for a concession here and a concession there, then there will be no cause to take control of the country and rule it. You will be able to rule because you have got the majority and you will continue. In agriculture, army, engineering in any walk of life you will be responsible. It is for you do you begin to think low of yourselves? Is an action worthy of a great community to forget that they are scheduled castes, although it is not their fault? Sardar Patel said: "Although you have acknowledged with gratefulness the concessions shown to you, I am sorry to say that you have not tried to try we want an atmosphere of peace and harmony, mutual confidence and trust.

"India today is suffering from want of blood. It is completely anaemic We must have blood in our veins. We have to build up the country and lay the foundation for the future.

"I feel proud that today we are able to bring about almost unanimously in a manner the past rules in the constitutions, loud cheers).

And now, we are with the grace of God and with the blessings of the almighty, laying the foundation for a free, united, democratic state where everybody will have equal opportunity. May God give us the courage and strength to do our right thing to all manner of people as our constitution provides", cheers).

The motion and the amendments were then put to vote. The house rejected the amendments of Mr. Mohamid Ismail and Mr. Lal, but accepted Pandit Thakurdas Bharava's amendment limiting reservation of seats for scheduled castes to ten years. The amended motion was adopted amidst loud and prolonged cheers.

The house adjourned till 8 A.M. tomorrow.—(A.P. & U.P.)

Approver's Statement

Before Alipore Court

A sensational story of a dacoity in which the gang was supplied with arms and ammunition by interested persons was related by the approver before Mr. D. N. Sarkar, Sessions Judge, Alipore, in the case in which Bibhuti Bhushan Dalui, described as a foreign worker, Lalji Das, Gobinda Marik, Jiten Maulik, Kalidas Patra alias Dasku, Ellias Gazi, Mona Sardar and Bankim Marik are being prosecuted in connection with a dacoity committed in the house of Hari Sardar alias Hari Chaprashi within Jaynagar Police Station, Lalji and three others are on bail.

Three others—Chittaranjan Chakravarty, Sachindra Banerjee and Umapada Halder are absconding. Sudhir Chandra Halder (26), who was also arrested in this connection, has turned approver. Mena Sardar made a confession before a Magistrate which he has retracted.

Examining the approver Sachindra Banerjee, Advocate for the Crown, the approver stated that in January last year, Lalji informed him that Bibhuti Babu, member of Congress Committee, wanted to see him. Accompanied by Lalji and two others, he met Bibhuti who advised them to do some political work. Bibhuti further asked them to meet him now and then. At a subsequent meeting he was told that his object was to form a party which would be helpful to them and distribute the money amongst the poor. At another meeting it was agreed that the house of Hari Chaprashi, a Congress leager, should be raided.

Similar instructions were received from Sachindra (absconding) who belonged to Bibhuti's party. Lalji told him that Bibhuti did not disclose to Bibhuti that they had similar talks with Sachindra nor did they tell him about their talk with Bibhuti. Their idea was to oblige both of them. That none of them would go against them.

In April, a man of their party should be engaged as a servant in the house of Hari Chaprashi. Intended victims. Mena Sardar was selected for the purpose. Mena saw Hari and got himself appointed as a domestic servant.

DATE FIXED

May 10 was fixed by the commission of the dacoity. A few days before that Bibhuti, Lalji and others met in the studio where the make-up-man advised witness how to put on disguises and gave them the address of a shop where to purchase the necessary articles. Bibhuti gave Lalji Rs. 100 and with revolver and bombs Sachindra gave the party Rs. 1,000. Bibhuti gave Lalji a sum of Rs. 100 with six hand-bombs, six khaki shirts and six hat-helmets.

On the appointed day the party consisting of the approver, Chittaranjan, Lalji, Jiten, Gobinda and Ellias were allowed to proceed towards the village of Hari Chaprashi. Witness approver had with him the revolver supplied by Bibhuti. Ellias was carrying the bombs. They met at about midnight when they reached the village. They met Mena and Umapada. As it was dark the party decided to postpone till the next night. They remained concealed in the village in the house of a relation.

Next evening as advised by Mena, they proceeded to Hari's house at 8 P.M. They found Hari writing in the verandah. On seeing them he went into the inner room to bring out his gun. Witness approver, Jiten and Gobinda rushed in, hearing the row a crowd began to collect. Witness fired a shot from the revolver in the roof and fired at random with Hari's gun. The crowd dispersed. Boxes and almirahs were searched and Rs. 20,000 in cash and some gold and silver jewellery were found. Mena Sardar then got a sword and threatened to kill Hari's young son in the adjoining house unless he (Hari) disclosed where he had hidden his treasure. But Hari did not disclose anything. Somebody then suggested that Hari should be killed to avoid future complications. Witness approver fired revolver from witness and shot twice at Hari. They then thought that Hari might have exploded a bomb at the time of their retreat.

They next went to a house in a neighbouring village where part of the loot was divided among Bibhuti, Sachindra and Gobinda each received Rs. 1,000. Dashu, Jiten and Umapada were paid Rs. 1,200. Rs. 1,300 and Rs. 1,025 respectively. Mena received Rs. 1,000. Witness received Rs. 2,000. Later, Sachindra was paid Rs. 2,000 and Bibhuti Rs. 1,000.

Witness, Jiten and Mena left the office at Howrah. attended office for three days and when they heard that Hari Chaprashi was still alive, he absconded. He went to Orissa and later to Eastern Pakistan. He came to Calcutta on hearing of his brother's illness and when he was returning to Naraingunge he was arrested at Sealdah station.

The hearing was adjourned.

Messrs. K. P. Mukherjee, Nanilal Ghose and D. P. Das, musicers, represented the different accused persons.

conditions were different and they had statutory safeguards. Why then should they demand separate electorate? How would it help them? Communal organisations would have to put up candidates and it would not lead to a harmonious working with the majority. The best thing for the Muslims to do was to trust the majority. If the Muslims wanted India to be a secular and non-communal state, they should not stand in the way of its emergence as such. (Loud cheers).

tendencies.

"So I thought about the matter and came to the conclusion," said Pandit Nehru, "that if at this stage of our nation's history when we are formulating our constitution—which may not be a very permanent thing because the world is changing, but nevertheless we wish it to be fairly lasting—we do one thing which is obviously wrong or which obviously make people look the wrong way it would be an evil thing for the future. We decided sometime ago that we should have no truck with communalism or separatism. It was rightly pointed out to us that if that is so, why you keep certain provisions like this will make people think in separate compartments in the political domain.

Asking the members to consider objectively whether there is some point in continuing safeguards of this type or any other type, whether there is democratic rule or foreign rule, Pandit Nehru said: "As soon as you get something that can be called political democracy then this kind of reservation instead of helping the parties is likely to actually turn against it. When there is a third party or when there is an autocratic rule, it is possible that these safeguards may be good but when you are up against the full-blooded democracy, if you seek to safeguard a small minority, you isolate it. May be, you protect it to a slight extent but at what cost? At the cost of isolating it, at the cost of being the sympathy and faith of the majority.

But nevertheless, in the very nature of things, in a democracy the will of the majority will ultimately prevail. It is a road thing for any small group or minority to make it appear to the world and to the majority that we wish to keep away, we do not trust you and therefore, we want these safeguards. Well, the result is that you get one anna in a rupee. This is not good enough."

"Look at it from the point of view of the majority. It is all very well for a majority to feel that it is strong in numbers and in other ways and therefore could afford to ride roughshod over the wishes of a minority. If a majority feels that way, it is not only exceedingly mistaken, but it has not learnt any lesson from history, because however big a majority, if injustice is done to minorities, it rankles and it is a running sore and that majority ultimately suffers from it.

So, ultimately, the only way to proceed about it, whether from the point of view of the minority or the majority, is to remove every barrier which separates them in the political domain so that they may develop a way and working together."

That did not mean, of course, a kind of regimented working, said Pandit Nehru. There might be many groups and parties but not on the minority, majority or religious plane but other planes social or economic.

"In the present state of affairs whether you take India or the larger world, one thing we have to develop is to think as much as possible in larger terms, otherwise we get out off from the reality. We do not appreciate what is happing, vast and enormous happenings, which really are cutting our present and future almost completely. Now if we stick to certain forms and ideals and continue to be suspicious of the past, we shall not understand the present, much less the future. Many of our discussions here inevitably look back on the past, but we ought to try out ourselves to rise from the past if we want to understand the future clearly".

PRESENT AND PAST

Explaining why he welcomed the proposal for giving reservation to the scheduled castes, Pandit Nehru said that in the present state of affairs in India it was a desirable thing to do. It was not done in any sense of religious minority, nut in a sense of helping the backward groups. He was glad that this reservation also would be limited to a fixed period of the ten years (cheers).

Stating how the present is different from the past, Pandit Nehru said: "Think over the problems that you and I and the country had to face five years ago and make a list of them and then make a list of the various problems that this House has had to consider day to day and compare the both. You will see the enormous difference between the two lists. That shows how we have changed whether for good or evil. That does not matter. The world has changed and India has changed. Problems of today are entirely different from the problems of yesterday. Many of the problems of yesterday have been solved or are in the way of solution. Many of the problems of today have arisen out of the solution of the problems of yesterday. Many of the problems of today have arisen out of the solution of the problems of yesterday. Many of the problems of today have arisen out of the solution of the problems of yesterday

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A. B. patrika 27-5-49.

NO RESERVED SEATS FOR MINORITIES

Consembly Adopts Patel's Motion

Ten Years' Concession For Scheduled Castes

NEW DELHI, May 26.

The Constituent Assembly, after a two-day debate, decided to-day by an overwhelming majority to abolish reservation of seats for all minorities except for Scheduled Castes for ten years.

With a chorus of 'ayes,' the House adopted Deputy Prime Minister Sardar Vallabhbhai Patel's motion to embody in the Constitution the proposals of the report of the Minority Advisory Committee, recommending abolition of reservation of seats except for Scheduled Castes. The House accepted an amendment by Pandit Thakurdas Bhargava limiting the concession to Scheduled Castes to ten years.

Two amendments, one by the Indian Muslim League Leader, Mr. Mohammed Ismail, asking for separate electorates, and another by Mr. Z. H. Lari (U.P.), suggesting the method of cumulative system of voting, were rejected.

Fourteen speakers representing various communities and including Prime Minister Nehru and Sardar Patel, took part in to-day's debate. None of the speakers to-day opposed Sardar Patel's motion.

Pandit Nehru said that the step that was being taken by the assembly was "a historic turn in our destiny".

Sardar Patel, whose winding-up speech was punctuated with applause, said that the House ought to be proud that almost unanimously it was removing "past blots" in the Indian constitution. After the Deputy Prime Minister had finished his speech, members crowded round him and congratulated him.

Mr. R. K. Sidhwa, who said that he had opposed reservation at the very first meeting of the Advisory Committee, felt that Sardar Patel's motion should be acceptable to every member of the House, irrespective of community. The country had seen the havoc wrought by communalism, he added.

Mr. Sidhwa's reply to Mr. Mohamed Ismail, who wanted separate electorates and who had said that it was wrong to go back on the previous decision to grant reservation, was that two of the members of the Advisory Committee, Chaudhri Kaliquzzaman and Mr. Chundrigar, who were party to reservation of seats at the first meeting of the Advisory Committee, subsequently went to Pakis-

(Continued On Page 5, Col. 2)

The Tribune

Ambala Cantt., May 28, 1949

THE SUPREME COURT

The judiciary occupies a pivotal position in a federal system of administration. It is not much of an exaggeration to say that in the ultimate analysis a federal government is run by lawyers rather than by politicians. The national and state governments derive their powers from the constitution but the constitution is what federal judges say it is. The constitution lays down the fundamental rights of citizenship. The judges of the Supreme Court have to decide whether the limits imposed upon them by the Executive and the Legislature are in conformity with the provisions of the constitution. It is, therefore, of utmost importance that the mode of selecting federal judges, the conditions of service and pay, age of retirement and such other problems should be carefully considered so that we have men of unimpeachable integrity and judicial eminence on the bench who discharge their duties fearlessly and without prejudice or favour. The first problem before the framers of the constitution is to determine the mode of selecting the judges. There are two main systems of selection—election and nomination. Some countries like Switzerland have provided for the election of the federal judiciary through the legislature. This system of appointment is open to the fatal objection that election by a legislature would result in the selection of men known for their political eminence rather than for their knowledge of law. The general practice in most countries is nomination. In Britain the judges are appointed by the King on the advice of his ministers. Were it not for the fact that there exists a remarkable tradition of judicial independence in Britain the system of simple nomination by the Executive would not have worked well because there is always the fear that Ministers may be influenced in their choice by political considerations. The mode of appointment of federal judges adopted in the United States nomination by the President with the concurrence of the Senate does not provide an adequate guarantee against appointment on the basis of political rather than judicial merit. The essential point is that judicial appointments should be made on the recommendation of those who are best qualified to find out the judicial qualities of the candidates. The Constituent Assembly has decided that judges of the Supreme Court shall be appointed by the President in consultation with the Chief Justice of India. Dr. Ambedkar did not accept Mr. Pocker's amendment that the concurrence of the Chief Justice of India rather than mere consultation in the appointment of the judges of the Supreme Court should be provided for in the constitution. Those who advocated concurrence of the Chief Justice, he argued, relied too much on the impartiality of the Chief Justice. There is some justification in Dr. Ambedkar's argument. But surely Dr. Ambedkar does not suggest that the President can be better relied upon to assess judicial merit than the Chief Justice. The best solution of the problem would have been nomination by the President on the advice of a committee consisting of the Chief Justice of India and some judges of the Supreme Court or the Chief Justices of the High Courts of the States. The recommendation of such a body would have been the best assurance that appointments were made on merit alone.

Interesting discussion followed on the question of the age of retirement of the Supreme Court judges. Some favoured appointment for good behaviour, others till the judge attained the age of 68, still others till he was 65 years old. The experience of Britain and the United States suggests that life long tenure is a mistake which other countries ought to avoid. There are two solid reasons why a definite age-limit for judges should be fixed. The fact that there are certain judges whose capacity for work is not gravely affected by age is no justification for retaining judges on the bench whose physical and mental weariness is a serious hindrance to the efficient performance of their judicial duties. The second reason is even more cogent. "Judges commonly are elderly men," wrote Mr. Justice Holmes of the United States, "and are more likely to hate at sight any analysis to which they are not accustomed and which disturbs repose of mind than to fall in love with novelties." It will be recalled the late President Roosevelt proposed to Congress in 1937 that a new judge should be appointed for each judge of the Supreme Court on his attaining the age of 70. This proposal was based upon the theory for which there is ample warrant that a judge after 70 reflects in his conscious assumptions and in his unconscious prejudices an outlook entirely different from that of the present generation. A dynamic society cannot afford to have men in the highest court of the land who represent an outlook at least thirty or forty years behind time. On the question of the qualifications of a judge the Draft Constitution provided for appointments to be made from among judges and advocates of the High Court but the Assembly accepted the amendment moved by Mr. H. V. Kamath to include eminent jurists among the persons eligible. In Europe and in the United States eminent jurists have made remarkable contribution to jurisprudence and have acquitted themselves as judges with great distinction. In the United States some of the best judges of the Supreme Court were not either judges or practising lawyers.

Clause 103 (4) of the Draft consitution provides that a judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament for such removal on the ground of proved misbehaviour or incapacity. This is a valuable guarantee of security of tenure. But it is also necessary to provide that all charges against a judge should be carefully investigated by judges of the Supreme Court and that full opportunity should be given to the accused judge to know the charges framed against him and present his defence before the Houses of Parliament are seized of the issue. The Draft constitution leaves the procedure of investigation of the charges to be determined by Parliament whereas it is far more desirable that it should be decided by the Assembly and the decision incorporated in the constitution. Should Supreme Court judges be permitted after retirement to hold an office of profit under the Government? Dr. P. K. Sen moved an amendment for the incorporation of a new clause in Article 103 debarring the Supreme Court judge from accepting any office of emolument after retirement except during a proclamation of emergency. While the principle underlying the amendment is perfectly sound we think any such restriction would result in depriving the country of the services of distinguished ex-judges of the Supreme Court. With a very limited first-rate talent at our disposal we cannot afford at present to impose any such restriction. The ultimate guarantee of judicial independence lies in building up right traditions, as in Britain, rather than in rigid and mechanical rules of behaviour during a judge's term of office or after his retirement.

The Hindustan Times

THURSDAY, MAY 26, 1949

ORDINANCE-MAKING POWERS

Article 102 of the constitution which defines the ordinance-making powers of the President was passed by the Constituent Assembly on Monday in the form in which it was introduced, after an interesting discussion in the course of which attempts were made to amend the article in order to restrict these powers. The article authorizes the President to promulgate ordinances when Parliament is not in session. The ordinances will, however, cease to operate six weeks after the assembly of Parliament or earlier if resolutions disapproving them are passed by both Houses. The intention is to arm the Executive with sufficient powers in an emergency when Parliament is not sitting, not the setting up of a parallel legislature, which is what the Government of India Act of 1935 sought to do in Sections 42, 43 and 44. The last section enabled the Governor-General even to promulgate Acts which would have the same validity as Acts of the Legislature as regards matters which fell under his discretion or were subject to the exercise of his individual judgment.

Opposition to the article did not question the need for such powers but sought to restrict their scope. One amendment attempted to exclude the citizen's right to personal liberty from the scope of ordinance-making powers of the President while another wanted the ordinances to be placed before Parliament within four weeks of promulgation. Pandit Kunzru sought to limit the period of operation of these ordinances to 30 days. In seeking to provide against the possibility of the Executive unduly delaying the summoning of Parliament in order to prolong the period of effectiveness of such ordinances and in trying to restrict unduly the period of their validity, the danger of making the whole procedure ineffective for the object for which this provision is being made must not be forgotten. Possibly, it was this consideration which induced the Constituent Assembly to reject all the amendments and pass the article in its original form. But the criticism of the article in the Assembly is a warning to the Government not to have recourse to these powers unless there is a real emergency. The Executive should not get into the habit of considering these powers as normal methods of rectifying official negligence or administrative inefficiency. These powers were notoriously abused under the old regime and the attitude of the public now is a reaction to this misuse. In fact, these powers have been frequently used even by the National Government. If the liberal, democratic regime we want to establish is to become a reality, these powers should be used so sparingly that they may be allowed to fall into desuetude.

Incidentally, the President, Dr Rajendra Prasad, raised the issue whether there was any provision in the constitution making it obligatory on the President to act on the advice of his Ministers on all matters, and especially in using his ordinance-making powers. Dr Ambedkar in his reply pointed out that the President was expected ordinarily to act on the advice of his Ministers and if he did not he would be forced to find an alternative Ministry to enable him to carry on the administration. He also referred to the crucial words "in the exercise of his functions" in Article 61 to support his contention. The article itself merely says that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." While the arguments in favour of keeping the words in the Act flexible where the constitution is to be allowed to develop broadening down from precedent to precedent are sound within limits, the danger of a future President insisting on a strict interpretation of the wording of the Act and relegating the Ministers to the position of advisers whose counsel he may seek but not accept is not one to be light-heartedly ignored, especially in a country like ours where there is no common agreement about accepting the fundamentals of the constitution in playing the political game. If the constitution can provide for the joint responsibility of the Cabinet, there is no reason why it should not provide for the President always acting on the advice of his Ministers within the limits laid down by the Constitution Act. It is a matter which deserves more serious consideration and we hope the Drafting Committee will give the point raised by the President the attention it deserves.

A. B. patnika 27.5

PRESIDENT'S POWERS

THE Constituent Assembly has adopted without any amendment Article 102 of the Draft Constitution, which empowers the President of the Union to promulgate an ordinance when he is "satisfied that circumstances exist which render it necessary for him to take immediate action," except "when both Houses of Parliament are in session." An ordinance thus promulgated "shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions."

It is well known that the framers of the Draft Constitution made a liberal use of the Government of India Act, 1935. The power given to the Governor-General by Section 42 of that Act is given to the President by Article 102 of the Draft Constitution. There are, however, two important points of difference. In the first place, under Section 42 the Governor-General is required to "exercise his individual judgment as respects the promulgation" of certain types of ordinances. But the President will have no right to "exercise his individual judgment"; he will always act on the advice of the Council of Ministers. Secondly, Section 42 makes it necessary for the Governor-General to take "instructions from His Majesty" before promulgating certain types of ordinances. There is no such provision in the Draft Constitution, for it does not recognise "His Majesty."

Section 42 of the Act of 1935 relates to ordinances promulgated "at any time when the Federal Legislature is not in session." Section 43 empowers the Governor-General to promulgate ordinances "at any time", i.e., even when the Federal Legislature is in session—with respect to certain subjects. Such ordinances can continue in operation for one year. As Dr. Ambedkar points out, this section completely excludes the Legislature and makes the Governor-General a "parallel legislative authority." This provision has found no place in the Draft Constitution. The President cannot issue ordinances if Parliament is in session.

The ordinance-making power of the head of the Executive is essentially a device for meeting emergencies. It is quite conceivable that a situation arising unexpectedly at a time when the Legislature is not in session may require immediate legislation. In England there is an Emergency Act under which the King is entitled to issue a Proclamation when Parliament is not in session. Such emergency legislation should be subject to clear restrictions, so that it may not encroach unnecessarily upon the liberty of the subject. Such restrictions are not wanting in the Draft Constitution.

Article 102 does not say that the ordinance-making power of the President will be exercised on Ministerial advice alone. Dr. Rajendra Prasad had a lurking suspicion that the President might not accept Ministerial advice and feel inclined to act according to his own judgment. Article 61(1) lays down that the Council of Ministers will "aid and advise the President in the exercise of his functions." Dr. Rajendra Prasad pointed out that this article did not specifically state that the President was bound to accept Ministerial advice. He asked whether there was any difficulty in making a specific provision that the President was bound to accept that advice. Dr. Ambedkar replied:

> The President can and will never be able to act independent of the Council of Ministers. If he does not accept the advice of one Ministry he has to find another Ministry. There is a provision relating to this in the *Instrument of Instructions*.
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A. B. patrika 27.5

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For argument's sake it may be pointed out that a Ministry might not resign even after the President's rejection of its advice on a particular matter. What happened then? Dr. Ambedkar "wanted to impress upon the House the fact that the President of India would be quite different in conception from that of the U.S.A." But Dr. Ambedkar's commentary will have no legal effect: his explanations will not be treated as part of the Constitution by the Supreme Court. The words "aid and advise" in Article 61(1) may be normally taken to be sufficient; but if a man of Dr. Rajendra Prasad's position and experience feels that the President may yet become a dictator, we see no harm in making the article quite explicit.

Pandit H. N. Kunzru wanted by an amendment that an ordinance under Article 102 should cease to operate at the expiration of 30 days from its promulgation. Dr. Ambedkar said that the reason for moving this amendment was the fear that the Executive might not summon Parliament within a month or two. He felt that there was no ground for such fear. Others, however, may not share his abundant faith in future Ministers. Under Articles 69(1) and 102(2) an ordinance may remain in force for 7½ months. Is it inconceivable that a power-loving Ministry may try to keep itself in power for 7½ months with the help of an ordinance which the Supreme Court cannot declare invalid? Pandit Kunzru's amendment ought to have been adopted.

A member from Madras wanted to add the proviso that ordinances issued under Article 102 "shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law." He moved this amendment, he said, "because of the recent experiences which we have had in the various provinces in the matter of enforcing ordinances and Public Safety Acts." Without commenting on these "recent experiences" we may say that Article 102(3) makes sufficient provision for safeguarding personal liberty. Any ordinance made by the President is subject to the same limitations as any law enacted in the ordinary process. As Dr. Ambedkar pointed out, Part III (Fundamental Rights) of the Draft Constitution could not be contravened by any ordinance.

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India Express 5 2 7 5

C. A. DECIDES TO DO AWAY WITH RESERVATION FOR MINORITIES

CONCESSION TO HARIJANS TO END AFTER 10 YEARS

Sardar's Motion Adopted With Bhargava's Amendment

NEW DELHI, May 26.

The Constituent Assembly today passed amidst prolonged cheers Sardar Patel's motion for the abolition of reservation for all minorities except the Scheduled Castes, as amended by Pandit Thakurdas's amendment suggesting that reservation for Scheduled Castes should be only for a period of ten years.

The House rejected by an overwhelming majority the two other amendments, one moved by Mr. Mohammed Ismail (Madras) seeking to retain reservation, and the other by Mr. Z. H. Lari (U.P.) suggesting the introduction of the system of cumulative voting.

INDIAN EXPRESS, FRIDAY, MAY 27, 1949.

Fourteen speakers representing various communities and including Prime Minister Pandit Nehru and Sardar Patel, took part in today's debate. None of the speakers today opposed Sardar Patel's motion.

Pandit Nehru said that the step that was being taken by the Assembly was "a historic turn in our destiny."

Sardar Patel in his reply to the debate uttered a warning against continuance of separatist tendencies and said he would "respectfully appeal" to all those who still believed in the two-nation theory to go "and enjoy the fruits of their freedom and leave us in peace." There was no place in this country for people who claimed separate representation.

Sardar Patel, whose winding-up speech was punctuated with applause, added that the House ought to be proud that unanimously it was removing "possibilities" in the Indian constitution.

After the Deputy Prime Minister had finished his speech, Members crowded round him and congratulated him.

Among those supporting Sardar Patel's motion were the Muslim members Mr. Nazimuddin Ahmed (West Bengal) Nawab Mohammed Ismail (U.P.), Mr. Tajamul Hussain (Bihar), Maulana Hazrat Mohani (U.P.), Col. B. H. Zaidi (Rampur-Benares), and Begum Aizaz Rasul (U.P.), the Indian Christian leaders Dr. H. C. Mookerjee and Rev. Jerome D'Souza, the Harijan representative from Madras Mr S. Nagappa.

THE DEBATE

The Constituent Assembly today resumed the debate on Sardar Patel's motion for consideration of the Advisory Committee's recommendation to abolish reservation of seats in Legislatures for minorities, except the Scheduled Castes.

Mr. R. K. Sidhwa, who said he had opposed reservation at the very first meeting of the Advisory Committee, felt Sardar Patel's motion should be acceptable to every member of the House, irrespective of communities, including the minority community, with its vast superiority in the number of votes, for not utilising the device for its own purpose." He felt that separate electorates were incompatible with a democratic government. The best minds of the Muslims had been thinking for a long time that, with the inauguration of responsible government, separate electorates would be harmful, at the time when the separate electorate system was claimed there was no direct election, and there was no statutory safeguard. With responsible Government functioning, those who were elected through the separate electorate system were doomed to be in the opposition always.

Mr. Sidhwa pointed out that at a meeting of some of the Muslim members of the Constituent Assembly it was decided to do away with reservation and in accordance with that decision, Begum Aziz Rasul had cast her vote. Replying to the demand that the separate electorate system be the Muslim members from Madras, Nawab Ismail said fundamental rights of citizens had been provided for in the Constitution, and they could vindicate their right before the Supreme Court which he felt was a much better forum than the legislature, where party feelings might run high. Muslims were prepared to give up separate electorates 20 years ago, provided safeguards were then given. But to-day the conditions were different and they had statutory safeguards. Why then should they demand separate electorate? How would it help them? Communal organisations would have to put up candidates, and it would not lead to a harmonious working with the majority. The only hope for Muslims to do was to trust the majority. If the Muslims wanted India to be a secular and non-communal State, they should not stand in the way of its emergence as such (loud cheers).

Mr R. K. Choudhuri, warmly supporting the motion, said that to-day, the great achievement should go to Sardar Patel. The minority problem had played a considerable part in the recent [illegible] masts, but on a political, economic and ideological basis, and they must be protected. For this purpose he advocated the system of cumulative voting with multiple-member constituencies as effective safeguard.

The Crutches

Col. B. H. Zaidi (Rampur-Benares), supporting Sardar Patel's motion, said, "The representatives of the various minorities, including the representatives of the Muslims, have given proof as never before of a sane, sound, balanced and patriotic outlook, which augurs well for the future."

Perhaps, said Mr Zaidi, the only exceptions were a few from the South For nearly 40 years the Muslims were accustomed to the props and crutches provided by the British. We came to love these props and crutches. Many a patient who is given crutches by his friends to do without them complains he is not good enough, has given him back his legs. These sentiments with to cling to their crutches.

He hoped that in the not distant future these friends would also come to realise that their truest friends were men like Sardar Patel *(cheers)* and our leaders who were shaping the destiny of this country. The best thing that Sardar could do, if he were not a friend of the Muslims, would be to let the Muslims cling to their crutches. It would make them cripples for the rest of their lives. Instead, the Muslims were being given the use of their legs and were being taught the lesson of self-reliance. Would any person possessing self-respect, pride or manliness cling to artificial safeguards? The real safeguard for the Muslims was reliance on their own strength and trust in the goodwill, friendliness, brotherly feeling, justice and even generosity of their brethren.

Earlier, Sardar Suchat Singh (Pepsu) also supported the resolution.

SARDAR'S REPLY

NO RESERVATION FOR MINORITIES: C. A. DECISION

(Continued from Page 1)

change them. He said that he was not enamoured of reservations. According to him, the Muslims of Assam do not want reservation. Then who wants it? He said that if in this House the majority of the Muslim members were against reservation, he would accept their opinion. He has heard the opinion of the Muslims in this House. Let him change his opinion."

Referring to Mr. Lari's amendment, Sardar Patel said he was told that Mr. Lari had admitted that the Committee's approach was right. There was no question of the Committee making a wrong approach because the initiative and the decision was left to the minorities. In support of his demand for a proportional representation, Mr. Lari had quoted the instance of Ireland. But Ireland was smaller than a [illegible] United Provinces. A single district of this country and even the India was a vast one. Franchise with so much illiteracy was a very difficult task. To introduce complications of the nature suggested by Mr. Lari would be a "very dangerous experiment." If Mr. Lari was satisfied that reservation was bad, he should not try to "bring it back by the back door."

Sardar Patel said that in the changed atmosphere, minorities would get even more than their due share of representation under joint electorates. This was proved only a month ago when in the Ahmedabad municipal elections every ex-Leader who fought on the Congress ticket won, while the Scheduled Castes secured one seat about their quota.

Sikhs' Claim

Addressing himself to the Sikhs, Sardar Patel said he had always held the Sikh community in considerable respect and admiration. He had been their friend even though they might dispute some times that claim. He would give them reservation and would induce the Minorities Committee to agree to it, but he felt that that was not in their interest. To sit with the Scheduled Castes for this claim did not

years.

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Sardar Patel, whose winding-up speech was punctuated with applause, added that the House ought to be proud that almost unanimously it was removing "positivists" in the Indian constitution.

After the Deputy Prime Minister had finished his speech, Members crowded round him and congratulated him.

Amongst those supporting Sardar Patel's motion were the Muslim members Mr. Nazirudding Ahmed (West Bengal) Nawab Mohammed Ismail (U.P.), Mr. Tajamul Hussain (Bihar), Maulana Hazrat Mohani (U.P.), Col. B. H. Zaidi (Rampur-Benares), and Begum Aizaz Rasul (U.P.), the Indian Christian leaders Dr. H. C. Mookerjee and Rev. Jerome D'Souza, the Harijan representative from Madras Mr S. Nagamuthu.

THE DEBATE

The Constituent Assembly today resumed the debate on Sardar Patel's motion for consideration of the Advisory Committee's recommendation to abolish reservation of seats in Legislatures for minorities, except the Scheduled Castes.

Mr. R. K. Sidhwa, who said he had opposed reservation at the very first meeting of the Advisory Committee, felt Sardar Patel's motion should be acceptable to every member of the House, irrespective of community. The country had seen the haven brought by communalism.

Mr. Sidhwa's reply to Mr. Mohamed Ismail, who wanted separate electorates and who had said it was wrong to go back on the previous decision to grant reservation, was that two of the members of the Advisory Committee, Chaudhri Kaliquzzaman and Mr. Chundrigar, who were party to reservation of seats at the first meeting of the Advisory Committee, subsequently went to Pakistan. After this could anyone blame the majority community for changing its attitude? Mr. Sidhwa added he had no doubt a large number of Muslim candidates would be returned to Legislatures under the system of joint electorates. The majority community, however, would not support those Muslims who still believed in the two-nation theory.

Prof. Shibbanlal Saxena said he had tried to find out how the introduction of cumulative voting would work out, and came to the conclusion that it would not secure for the minorities adequate representation. This system was also undemocratic because it gives one man power to pool all his votes, instead of giving every man one vote. He wished, however, that it were given a trial, but the Indian electorate was not sufficiently educated at the present moment to try it out.

Sardar Hukam Singh (E.-Punjab) said he was whole-hearted support to the resolution. Separate electorates had been given a long trial and the system had created cleavage among the communities. Cumulative voting was a wholesome measure, but in a country like India where 90 per cent of the electorate was illiterate, it would be very difficult to work.

Saying that the safety of the minorities lay in a secular State, Sardar Hukam Singh added that Sikhs wanted to contribute to the goal of one nation. The Sikhs, however, had certain fears as regards their language and employment in the services. He knew these fears could be removed by the executive. The minorities report had said certain matters could be left to be decided by convention.

Referring to the observation of Sardar Patel that the grant of reservation of seats to certain classes of Sikhs was a "concession" to the Sikhs, he said it could not be treated as such. Scheduled Castes among Hindus had been given reservation because they were backward socially, economically and politically, and not because they were a religious minority. Similarly certain castes among the Sikhs had been included among the Scheduled Castes because they were also backward. The Sikhs were, however, grateful for this provision and were prepared to work shoulder to shoulder with other communities to achieve the goal of one nation.

What Muslims Want

Mr. Mohamed Ismail (U. P.) gave "unstinted support" to the resolution of the Advisory Committee. The reservation of seats, he said, "is designed to keep alive communalism, and is not an effective safeguard for the Muslim minority or a backward minorities. I congratulate the majority

(continued on page 4)

NO RESERVATION FOR MINORITIES: C. A. DECISION

(Continued from Page 1)

community, with its vast superiority in the number of votes, for not utilising the device for its own purpose." He felt that separate electorates were incompatible with a democratic government. The best minds of the Muslims had been thinking for a long time that, with the inauguration of responsible government, separate electorates would be harmful, at the time when the separate electorate system was claimed there was no direct election, and there was no statutory safeguard. With responsible Government functioning, those who were elected through the separate electorate system were doomed to be in the opposition always.

He pointed out that at a meeting of some of the Muslim members of the Constituent Assembly it was decided to do away with reservation and in accordance with that decision Begum Aizaz Rasul had cast her vote. Replying to the demand for the separate electorate system by the Muslim members from Madras, Nawab Ismail said fundamental rights of citizens had been provided for in the Constitution, and he could vindicate their right before the Supreme Court which he felt was a much better forum than the legislature, where party feelings might run high. Muslims were prepared to fight separate elections for 30 years ago, provided safeguards were then given. But to-day not conditions were different and they had statutory safeguards. Why then should they demand separate electorate? How would it help them? Communal organisations would have to put up candidates, and in many cases it would be a harmonious working with the majority. The real thing for Muslims to do was to trust the majority. If the latter failed in its duties to be a secular and non-communal State, they should not stand in the way of its emergence as such (loud cheers).

Mr R. K. Choudhuri, warmly supporting the motion, said that it was a day for the great achievement should go to Sardar Patel. The minority leaders had made considerable part in the recent history of the nation, and this was being solved satisfactorily. Referring to Assam, he said the difference in percentage between Caste Hindus and tribes was only six per cent, and he felt it was not necessary to provide for reservation of seats for any community. They should make any investment in that providing of a free election.

Anglo-Indian Gratitude

Mr. Frank Anthony said the motion did not affect the safeguards provided for Anglo-Indians. Those safeguards were being retained. The leaders of India did not only forgive and forget the past, but they had recognised the special need and difficulties of this small minority. "Today I am able to say with a sense of inexpressible gratitude that the Anglo-Indian, as an Indian, this small community, the Advisory Committee was uniquely generous."

It was asked in some quarters whether the Anglo-Indians had given any help towards the struggle for freedom. He said they had not joined the reactionary powers intended to retard the cause of freedom. The past was an insuperable hurdle for him. In spite of that, the community not only received concessions in one of India's minorities, but it was accorded special treatment.

No Regimentation Or Fear

Mr Anthony paid a tribute to Sardar Patel, whose attitude during the deliberations of the committee was "generous and inspired by an attempt to understand the real feeling and psychology of the minorities. He added: "I have not suffered fear, real or imaginary, it was better in the larger interest of the country to ascertain that and look at it from the point of view of the minorities. Whatever decisions were reached by the Advisory Committee, they were the result of unanimous agreement. They were not imposed decisions but were based on friendly understanding, compromise and faith. He sincerely denied the suggestion that the minorities were harassed in India and that their representatives were subjected to a sense of fear or regimentation. He added: "I have not suffered from any sense of fear or regimentation. The minorities representatives are not stooges of any particular party. When we say that we have been generously treated, we mean it. It is the generosity of glory were the result of unanimous agreement. They were not imposed decisions but were based on friendly understanding, compromise and faith. He sincerely denied the suggestion that the minorities were harassed in India and that their representatives were subjected to a sense of fear or regimentation. He added: "I have not suffered from any sense of fear or regimentation. The minorities representatives are not stooges of any particular party. When we say that we have been generously treated, we mean it. It is the generosity of glory fear which provoked us to say". He said that if any minority elected leaders by sectarianism or separatism they could serve themselves they were making a mistake. The real guarantee for the efficiency or equality of opportunity was the establishment of a secular State.

At this stage Pandit Nehru intervened and made a brief speech. (See elsewhere).

Will Stand For Their Legs

Mr. Tajamul Hussain (Bihar) said he was of opinion that there should be no reservation of seats for any community. No community having a particular type of democratic system had reservation of seats. Even in the House of Commons seats reserved for universities had been abolished.

Speaking as a Muslim, Mr. Hussain said he could say Muslims did not want reservation, which meant forcing of candidates on an unwilling electorate. The effect of separatorated have been the curse of India and have done the country incalculable harm. Muslims were Indians and Indians last and would fight for the honour of the country.

He appealed to the majority community not to give reservation of seats to any class but to allow them to stand on their legs. If statutory recognition was given to Muslims as a minority, they would suffer from an inferiority complex. They would be isolated, and isolation would lead to frustration and cripple them.

Referring to Mr. Ismail's demand for separate electorates, he said he would appeal to Mr. Ismail "not to ask for charity." Muslims must enter the legislatures by open competition.

Mr. Lari's amendment to introduce a cumulative system of voting, he said, was a "backdoor method" to enter the legislatures and was even worse than reservation of seats.

The majority of Muslims in the Assembly, he contended, were in favour of removal of reservation of seats and separate electorates. Quoting figures in support of his argument, Mr. Hussain said that out of 23 members, ten had given up Pakistan and 13 of the remaining 23 favoured joint electorates.

Saying he was one of the two Shia members in the Assembly, Mr. Hussain said Shias had all along been fighting for the removal of separate electorates and had been ardent Nationalists. He read a resolution passed at the last Shia conference which wanted the removal of separate electorates.

Mr. L. S. Bhatkar, (C. P. and Berar), supporting the resolution, congratulated Sardar Patel on the able manner in which he had solved the difficult problem of reservation for minorities. He said he himself was not in favour of the Scheduled Castes being given reservation on grounds of principle. He, however, felt that, in view of the fact that they were backward, socially and economically, reservation could be justified. What the Scheduled Castes needed most were facilities for education and representation in services. The Provincial Governments were not rendering much help in this regard. He hoped that after ten years this reservation would be abolished and Harijans would be able to progress without any let or hindrance.

There Is No League

Maulana Hazrat Mohani (U. P.) said he gave his "entire support" to the motion. He was opposed to the amendment moved by the Muslim Muslim members not on the ground that they demanded separate electorates but for the reason that they wanted to revive the Muslim League. There was no Muslim League in India nor were there Provincial Muslim Leagues, but Mr. Mohamed Ismail wanted to proclaim the existence of the All-India Muslim League. He added: "Let us once and for all decide that we will not have any communal parties amongst us. If we have to establish a democratic Government, there is no room for any religious party or communal party."

Maulana Mohani said minorities in a democratic State submitted to the decision of the majority on the principle that the latter could form the government later when the position reversed. If parties were formed on a communal basis, the object of democracy remained unfulfilled. It was, therefore, hopelessly absurd to allow the existence of communal parties. Only by political alignments and formation of parties on an economic basis could they come to power. His advice to Muslims would always be to eschew communalism once for all.

Mr. Mahabir Tyagi congratulated Sardar Patel on achieving "communal consolidation of the country" after having unified the country politically and economically. He was glad most of the Muslim members supported withdrawal of reservation. He felt Muslim candidates would have to be prepared for initial setbacks in the elections, but subsequently they would be returned in large numbers on the merit and service of the candidates would be the main consideration.

Referring to reservation of seats for the Scheduled Castes, Mr. Tyagi said the House was reintroducing the virus of communalism which the British had introduced. Reservation of seats should be on a class basis and should be accorded to landless labour, the poor and the economically backward and oppressed, for the benefit of the country and for the sake of Good Government. Minorities must exist, not on a communal basis, but on a political, economic and ideological basis, and they must be protected. For this purpose he advocated the system of cumulative voting with multiple-member constituencies as effective safeguard.

The Crutches

Col. B. H. Zaidi (Rampur-Benares), supporting Sardar Patel's motion, said, "The representatives of the various minorities, including the representatives of the Muslims, have given proof as never before of a sane, sound, balanced and patriotic outlook, which augurs well for the future."

Perhaps, said Mr Zaidi, the only exceptions were a few from the South For nearly 40 years the Muslims were accustomed to the props and crutches provided by the British. We came to love these props and crutches. Many a patient who is given crutches is reluctant to do without them even when some good surgeon has given him back his legs. These gentlemen wish to cling to their crutches."

He hoped that in the not distant future the Muslim leaders will come to realise that their truest friends were men like Sardar Patel (cheers) and other leaders who were shaping the destiny of this country. The best thing the Sardar could do, if he had not already done so, was to declare that he to let the Muslims cling to their crutches. We can only see them cripples for the rest of their lives. Instead, the Muslims were being given the use of their legs and were being taught to have a sense of self-reliance. Would any person possessing self-respect like the Muslim minorities cling to artificial safeguards? The real safeguard for the Muslims was reliance on their own strength through the goodwill, friendliness, brotherly feeling, justice and even generosity of their colleagues.

Earlier, Sardar Suchat Singh (Pepsu) also supported the resolution.

SARDAR'S REPLY

Replying to the debate, Sardar Patel said that when he was appointed Chairman of the Advisory Committee on Minorities on Minorities, the task was imminently difficult owing to the history of so many years of foreign rule. Conditions in the country were extremely difficult, and all classes of people were full of suspicion. There was fear that the moment power was transferred, a gradual transformation would begin to take place and it gave him considerable encouragement.

Later he began to sense a feeling of gradual growth of trust and mutual confidence.

Pointing out that even at the first meeting of the Advisory Committee Nationalist-minded leaders like Dr. H. C. Mookerjee proposed some kind of safeguard for minorities, Sardar Patel said, "I am sure you will be pleased today that his ambition is being fulfilled." (cheers).

There were other groups of people who wanted in addition to get out of the mire into which they had fallen and a friend from Madras had put forward a proposal for reservation of seats and communal electorates.

The motion for separate electorates was supported by that great Muslim League leader who was sure [illegible] *to the constitution in this House and immediately afterwards packed off to Karachi". He was now carrying on the work of the Muslim League on that side. He had left a legacy here. That residuary legatee was perhaps in Madras* (Laughter).

'Go If You Feel Different'

There was still a vast amount belonging to the old British League which had yet to be divided, and some people felt that minds got so much rusty as that of this if they persisted in continuing the old days here' Sardar Patel did not think that even if a section of that nature was brought here, it would do any good to those who got it. Those who believed there were two nations which had nothing in common and therefore they must have a separate State could not be kept here if they had got it. He did not blame them, but he would "respectfully appeal" to those who wanted to go with the same heart here to go and "enjoy the fruits of their freedom and leave us in peace". There was no place here for those who claimed separate representation.

Separate electorates were introduced in this unfortunate country not on the demand of the people but they were forced upon it but, as Maulana Mohamed Ali had said, as a command performance That command performance had fulfilled its task.

"Now I want the consent of all the minorities to remove the curse of history. You have the honour and privilege to do it. Future generations will record in letters of gold what you have done.

Sardar Patel said: "We are a free country. This is a sovereign State and we are a sovereign Assembly. We are moulding our future according to our own free will. Therefore, please forget the past. Try to forget it. If it is impossible, then the best place for you is where your thoughts and your ideas draw you. Whatever may be your credit for having won a separate homeland, please do not forget what the poor Muslims have suffered, I have them in peace'.

Forget Caste

The future of any minority, said Sardar Patel, was to trust the majority. If the majority misbehaved, it would suffer. It would be misfortune for the country if the majority did not realise its responsibilities. If he were a member of a minority community, he would forget that he was in a minority. Why should not a member of any community be the Prime Minister of this country? He was glad to hear Mr. Nagappa say that it was a privilege to be born a member of the Scheduled Castes. It was not a dishonour. But an honour. Sardar Patel wanted every member of the Scheduled Castes to feel that he was superior to the Brahmin, or what was better still, for every member of the Scheduled Castes and for every Brahmin to forget his caste.

Sardar Patel recalled that at an earlier meeting of the Advisory Committee Mr. Tajumul Hussain was asked whether he had consulted other members of the Muslim community and Mr Hussain replied that he had done so. In spite of that, Sardar Patel had asked all members of the minority communities to consult their constituencies. The Committee met four months later, but unfortunately Syed Mohammed Saadulla was not present.

The opinions Syed Mohammed Saadulla had gathered were not even communicated to the Committee. Sardar Patel did not know whether Syed Saadulla had consulted Maulana Azad or not, but Syed Mohammed Saadulla had said that the Maulana remained neutral at the last meeting of the Committee. Syed Saadulla claimed to know the Maulana's mind more than Sardar Patel did. But Sardar Patel could tell Syed Mohammed Saadulla that the Maulana was not a cypher. Maulana Azad had the courage and conviction and if he felt that it was against the interests of his community to abolish reservation, he would have immediately stood up and protested. But he did not do so, because he knew that what was being done was right (Cheers). Therefore, if Syed Mohammed Saadulla interpreted Maulana Azad's silence as neutrality or dissent, he was much mistaken.

Maulana Azad had stood up against his own community when he felt that he was right. Sardar Patel was sure that if ever it had occurred to Maulana Azad that it was a country of two nations after the division, he would not have remained. But there were people who worked, for separation, who claimed all through their lives that there were two nations and were elected to represent here the remaining nation

Saadulla Must Change His Opinion

"I am surprised," said Sardar Patel, "the Syed Mohammed Saadulla claims to represent the vast masses of Muslims in the country now. How can he? I am amazed that he makes that claim. I represent the Muslim more than he can ever do (Cheers) He has never done what by the grace that he has followed all his life. He must change them. He said that he was not enamoured of reservation. According to him, the Muslims of Assam do not want reservation. Then who votes it? He said that it is the House the majority of the Muslim members were against reservation. We will accept their opinion. He has heard the opinion of the Muslims in this House. Let him change his opinion."

Replying to Mr. Lari's amendment, Sardar Patel said he was told that Mr. Lari had admitted that the Committee's approach was right. There was no question of the Committee making a wrong approach because the initiative and the decision was left to the minorities. In support of his demand for a proportional representation, Mr. Lari had quoted the instance of Ireland. But Ireland was smaller than a single district of the United Provinces. India was a vast country and even the introduction of adult franchise with much illiteracy was a very difficult task. To introduce complications of the nature suggested by Mr. Lari, would be a very dangerous experiment." If Mr. Lari was satisfied that reservation was bad, he should try to "bring it back by the back door."

Sardar Patel said that in the changed atmosphere, minorities would get even more than their due share of representation in joint electorates. This was proved only a month ago when in the Ahmedabad municipal elections every Leader who fought on the Congress ticket won, while the Scheduled Castes secured one seat about their quota.

Sikhs' Claim

Addressing himself to the Sikhs, Sardar Patel said he had always had a high opinion of community in considerable respect and admiration. He had been their friend even though they might disagree sometimes that claim. He would give them reservation and would do so. The Minorities Committee to agree to it, but he felt that that was not in their interest. To sit with the Scheduled Castes on chairs did not reflect to the credit of the Sikh community. Saying the Sikhs had a Panjit Singh, whereas the Scheduled Castes had no whereas the Scheduled Castes had no princes of their own in history, Sardar Patel asked, "What have the Scheduled Castes got, poor down-trodden and absolutely cast-with-the-dust as they are? What is their position to-day, in spite of our tall talk?"

Two thousand members of the Scheduled Caste community, he added, had been converted to Christianity three days in Hyderabad. The reason that made them change their religion was that they were tired of their past association with the Rajakars and thought they would be safe if they changed their religion.

Plight of Scheduled Castes

Asking the question whether any of the members had gone and stayed for an hour in a Scheduled Caste scavenger's house, Sardar Patel continued: "Where they are place which they can call their home, though Mr. Nagappa (Scheduled Caste member from Madras) says that India is his. I am proud of it, but what about the poor people who are oppressed everywhere? They are not even yet under our protection. We have given a pledge to them under the Poona Pact. Have we fulfilled that? We must confess we are guilty. Thousands of them in other parts of the country (loud cheers) have come to Pakistan I want to come back but they are not allowed to return. Unfortunately we are not able to help them. That is the position of the Scheduled Castes."

Some of the Sikhs who wanted reservation did not suffer from the difficulties felt by the Scheduled Castes.

Declaring that fear would wreck and undermine the cause of the Sikhs, Sardar Patel said: "I appeal to you not to take up a quarrel for a concession here and a concession there. I would ask you, Sikhs, to be control of the country and rule it. You will be able to rule because you have got the resources. You are not able to think in agriculture, army, engineering, in any walk of life, you have proved your mettle. You do not have to think any more of yourselves? I am asking even the Scheduled Castes to forget their past and Scheduled Caste, although it is very difficult for them to do so.

"Although you have acknowledged with gratefulness the concessions shown to you, I am grateful to you because in this country we want an atmosphere of peace and harmony, not of suspicion and distrust."

"India today is suffering from want of blood. It is completely anaemic. We must put blood into her veins first. We have to build up our nation on the right foundation for the future."

"I feel proud that today we are able to bring about almost unanimity in removing the past blots in our Constitution. (Loud cheers).

"And now, we are today, with the grace of God and with the blessings of the Almighty, laying the foundation of a true, secular, democratic State where everybody will enjoy equal rights and opportunity. May God give us wisdom and courage to do the right thing to all manner of people as our constituent assembly."

The motion and the amendments were then put to vote. The House rejected the amendments of Mr. Mohammed Ismail and Mr. Lari but accepted Pandit Thakurdas Bhargava's amendment limiting reservation of seats for Scheduled Castes to ten years. The amended motion was adopted without loud and prolonged cheers.

The House then adjourned to 9 a.m. tomorrow.

India Express 27.5

NEHRU CALLS FOR GOODWILL FROM ALL SIDES

'Safeguards Only Mean Isolation'

Prime Minister Nehru, described as "historic" Sardar Patel's motion in the Constituent Assembly for abolition of reservation of seats for minorities.

Intervening in the debate, Pandit Nehru said: "There has been such abundance of goodwill shown towards this motion that it is hardly necessary for me to intervene in support of it, but I felt the urge to do so, because [illegible] turn of our destiny [illegible]. It is a motion which means not only discarding something that was evil, but turning back upon it and determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation. All of us here, I believe, are convinced that this business of separatism, whether it took the shape of separate electorates or other shapes, has done a tremendous deal of evil to our country and to our people.

Two Reasons

"We came to the conclusion some time back that we must get rid of 'separate electorates. That was the major evil. Reluctantly we agreed to carry on with some measure of reservation. Reluctantly we did so for two reasons.

"Firstly, we felt that we could not remove that without the goodwill of the minorities concerned. It was for them to take the lead or to say that they did not want it. For the majority to force it down their throats would not be fair to the various assurances we have given in the past and, otherwise too, it did not look the right thing to do.

"Secondly, we agreed to that reservation because in our heart of hearts we were not sure of ourselves and of our own people. How would they function when all these reservations were removed?

"We agreed to reservations, but always there was this doubt in our minds whether we had not shown weakness in dealing with a thing that was wrong. So when this matter came up in another context and it was proposed that we do away with all reservations except in my part I accepted that with alacrity and with a feeling of great relief, because I had been fighting in my own mind and heart against this business of keeping up some measure of separatism in our political domain.

"And the more I thought of it, the more I felt that it was the right thing

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NEHRU ON MINORITIES

(Continued from Page 1)

to do, not only from the point of view of pure nationalism, which it is, but also the separate and individual viewpoints of each group, the majority and the minority. We all call ourselves nationalists, but perhaps in the minds of each the colour and texture of nationalism that is present is something different from what it is in the mind of the other. We call ourselves nationalists, and rightly so, and yet few of us are free from those separatist tendencies, whether they are communal, provincial or other. Yet, because we have those tendencies, it does not necessarily follow that we should surrender to them all the time. It does follow that we should not take the cloak of nationalism to cover those bad tendencies."

Looking objectively, said Pandit Nehru, there was some point in having reservation or any other kind of safeguard for a minority where there was autocratic rule or foreign rule, but as soon as there was something that could be called political democracy, this kind of reservation, instead of helping the party to be safeguarded and helped, was likely actually to turn against it. Where there was a third party or where there was autocratic rule, it was possible that these safeguards might be good or that the monarch or foreign ruler might play off one against the other. "But where you are up against a full-blooded democracy, if you seek to give safeguards to a minority, you isolate it. May be you protect it to some extent but at what cost? At the cost of isolating it and keeping it away from the main current in which the majority is going—I am talking on a political plane, of course—at the cost of forfeiting that inner sympathy and fellow-feeling of that majority. Obviously, if it is a democracy, in the long run or in the short run it is the will of the majority that will prevail. The result is that the minority may get one anna in the rupee of protection at the cost of the remaining 15 annas. That is not good enough.

Majority Viewpoint

"Look at it from the point of view of the majority. It is all very well for a majority to feel that it is strong in numbers and in other ways and therefore it could afford to ride roughshod over the wishes of a minority. If a majority feels that way, it is not only exceedingly mistaken, but it has not learnt any lesson from history, because, however big a majority, if injustice is done to minorities, it rankles and it is a running sore, and that majority ultimately suffers from it. So ultimately the only way to proceed about it, whether from the point of view of the minority or of the majority, is to remove every barrier that separates them in the political domain, that they may develop a way of working together."

That did not mean of course, a kind of regimented working. There might be many groups and parties but not on the minority-majority or religious plane but other planes, social or economic.

Frankly, said Pandit Nehru, he would have liked to go further and put an end to the reservation in regard to the Scheduled Castes too, but frankly also he realised that in the present state of affairs in India, that would not be a desirable thing to do. He tried to look upon this problem not in the sense of a religious minority, but rather in the sense of helping backward groups in the country. He was glad that this reservation would be limited to a fixed period of ten years.

Secular Democracy

"Doing away with reservation is not only a good thing in itself, good for all concerned and more especially for the minorities, but psychologically a very good move for the nation and for the world. It shows that we are really sincere about having secular democracy.

"I use the words secular democracy as many other people use them, but sometimes I have the feeling that they are used a bit too much by people who do not understand their significance. It is an ideal we aim at and yet perhaps very few of us, whether we are Hindus or Muslims or Sikhs or Christians, can claim to have no prejudices and no taint of communalism."

No Sermonising

"I do not myself particularly fancy any one of us trying to deliver sermons and homilies to the other as to how he should behave, or one group telling the other, whether it is the minority group telling the majority, 'you should do this or that,' or whether it is the majority telling the minority, 'you should do this or that to gain our goodwill.' Of course something has to be done to gain goodwill, but goodwill or loyalty or affection is hardly a thing which is obtained by sermonising. It develops because of certain circumstances, certain appeals of the mind and heart and the realisation of what is really good for one. Now, when this House is going to take a major decision which will affect our future greatly, let us be clear in our minds that, in order to proceed further, each one of us, whether belonging to a minority or majority, should try to function in a way to gain the goodwill of the other group or individual."

Pandit Nehru said Mahatma Gandhi stressed the good in every individual or group and drew good out of him and made him function to the best of his ability. That was the only way of going ahead, Mr. Frank Anthony had reminded the House that the motion before it was an act of faith for all, particularly for the majority community because it would have to behave towards others in a generous, fair and just way.

"Let us live up to this faith," said Pandit Nehru amidst cheers.

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BOMBAY, THURSDAY, MAY 26, 1949.

COMMUNITY OR NATION ?

The Constituent Assembly began on Wednesday an interesting discussion on the privileges to be allowed to minorities under the new constitution.

The discussion arose on Sardar Patel's motion to accept the report of the Assembly's Minorities Committee which had been submitted some days ago.

That report had recommended that excepting Scheduled Castes, no minority should be allowed to have any special reservation of seats.

Scheduled Castes were to have reserved seats for a period of ten years.

To meet certain complaints from Sikh quarters, it was decided to allow Sikh Scheduled Castes also to share this privilege.

The Minorities Committee had only the question of reservation of seats before it. It had already been decided by the Constituent Assembly that there should be no separate electorates.

The decision of the Minorities Committee was widely welcomed in the country.

From Press and Platform, congratulations were showered on the Committee for its boldness and wisdom in recommending the abolition of a system that had wrought infinite harm.

When the motion to adopt the report of the Committee came before the Constituent Assembly it would not have been surprising if it had been passed with acclamation.

But those who expected this—we were also among them—did not calculate correctly the strength of communal diehardism prevailing in certain sections of the Assembly.

The debate on Sardar Patel's motion evoked a surprisingly long debate which could not be finished in one day.

Three amendments were moved. One of these, by Pandit Thakurdas, was blameless and wanted only to make sure that the reservation now granted to Scheduled Castes would not be extended for more than ten years.

Another amendment moved by Mr. Z. H. Lari recommended the adoption of the cumulative voting system in multi-member constituencies.

This would enable the minority part of an electorate to get their own candidate into the Legislature if they all voted together.

From the scientific point of view, cumulative voting may be better than the ordinary system. But it is doubtful if the illiterate electorate of India will understand its refinements.

The most surprising of the amendments to Sardar Patel's motion came from a member of the Old Guard of the Muslim League, Mr. Mohammed Ismail of Madras.

He wanted not merely reservation of seats for minorities in a general electorate, but separate electorates on the old model.

All the travail that India has undergone since first separate electorates were introduced, all the blood that has been shed in communal riots since then, did not seem to have made any effect on his mind.

His only idea was that minorities must get their pound of flesh.

Sardar Patel's motion will, no doubt be passed by the Constituent Assembly.

The discussion and the amendments have, however, been of use.

We are now aware that there are still in the country sections whose main concern is their community and not the nation.

The Tribune

Ambala Cantt., May 27, 1949.

THE SUPREME COURT

The judiciary occupies a pivotal position in a federal system of administration. It is not much of an exaggeration to say that in the ultimate analysis a federal government is run by lawyers rather than by politicians. The national and state governments derive their powers from the constitution but the constitution is what federal judges say it is. The constitution lays down the fundamental rights of citizenship. The judges of the Supreme Court have to decide whether the limits imposed upon them by the Executive and the Legislature are in conformity with the provisions of the constitution. It is, therefore, of utmost importance that the mode of selecting federal judges, the conditions of service and pay, age of retirement and such other problems should be carefully considered so that we have men of unimpeachable integrity and judicial eminence on the bench who discharge their duties fearlessly and without prejudice or favour. The first problem before the framers of the constitution is to determine the mode of selecting the judges. There are two main systems of selection—election and nomination. Some countries like Switzerland have provided for the election of the federal judiciary through the legislature. This system of appointment is open to the fatal objection that election by a legislature would result in the selection of men known for their political eminence rather than for their knowledge of law. The general practice in most countries is nomination. In Britain the judges are appointed by the King on the advice of his ministers. Were it not for the fact that there exists a remarkable tradition of judicial independence in Britain the system of simple nomination by the Executive would not have worked well because there is always the fear that Ministers may be influenced in their choice by political considerations. The mode of appointment of federal judges adopted in the United States nomination by the President with the concurrence of the Senate does not provide an adequate guarantee against appointment on the basis of political rather than judicial merit. The essential point is that judicial appointments should be made on the recommendation of those who are best qualified to find out the judicial qualities of the candidates. The Constituent Assembly has decided that judges of the Supreme Court shall be appointed by the President in consultation with the Chief Justice of India. Dr. Ambedkar did not accept Mr. Pocker's amendment that the concurrence of the Chief Justice of India rather than mere consultation in the appointment of the judges of the Supreme Court should be provided for in the constitution. Those who advocated concurrence of the Chief Justice, he argued, relied too much on the impartiality of the Chief Justice. There is some justification in Dr. Ambedkar's argument. But surely Dr. Ambedkar does not suggest that the President can be better relied upon to assess judicial merit than the Chief Justice. The best solution of the problem would have been nomination by the President on the advice of a committee consisting of the Chief Justice of India and some judges of the Supreme Court or the Chief Justices of the High Courts of the States. The recommendation of such a body would have been the best assurance that appointments were made on merit alone.

Interesting discussion followed on the question of the age of retirement of the Supreme Court judges. Some favoured appointment for good behaviour, others till the judge attained the age of 68, still others till he was 65 years old. The experience of Britain and the United States suggests that life long tenure is a mistake which other countries ought to avoid. There are two solid reasons why a definite age-limit for judges should be fixed. The fact that there are certain judges whose capacity for work is not gravely affected by age is no justification for retaining judges on the bench whose physical and mental weariness is a serious hindrance to the efficient performance of their judicial duties. The second reason is even more cogent. "Judges commonly are elderly men," wrote Mr. Justice Holmes of the United States, "and are more likely to hate at sight any analysis to which they are not accustomed and which disturbs repose of mind than to fall in love with novelties." It will be recalled the late President Roosevelt proposed to Congress in 1937 that a new judge should be appointed for each judge of the Supreme Court on his attaining the age of 70. This proposal was based upon the theory for which there is ample warrant, that a judge after 70 reflects in his conscious assumptions and in his unconscious prejudices an outlook entirely different from that of the present generation. A dynamic society cannot afford to have men in the highest court of the land who represent an outlook at least thirty or forty years behind time. On the question of the qualifications of a judge the Draft Constitution provided for appointments to be made from among judges and advocates of the High Court but the Assembly accepted the amendment moved by Mr. H. V. Kamath to include eminent jurists among the persons eligible. In Europe and in the United States eminent jurists have made remarkable contribution to jurisprudence and have acquitted themselves as judges with great distinction. In the United States some of the best judges of the Supreme Court were not either judges or practising lawyers.

Clause 103 (4) of the Draft constitution provides that a judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament for such removal on the ground of proved misbehaviour or incapacity. This is a valuable guarantee of security of tenure. But it is also necessary to provide that all charges against a judge should be carefully investigated by judges of the Supreme Court and that full opportunity should be given to the accused judge to know the charges framed against him and present his defence before both Houses of Parliament are seized of the issue. The Draft constitution leaves the procedure of investigation of the charges to be determined by Parliament whereas it is far more desirable that it should be decided by the Assembly and the decision incorporated in the constitution. Should Supreme Court judges be permitted after retirement to hold an office of profit under the Government? Dr. P. K. Sen moved an amendment for the incorporation of a new clause in Article 103 debarring the Supreme Court judge from accepting any office of emolument after retirement except during a proclamation of emergency. While the principle underlying the amendment is perfectly sound we think any such restriction would result in depriving the country of the services of distinguished ex-judges of the Supreme Court. With a very limited first-rate talent at our disposal we cannot afford at present to impose any such restriction. The ultimate guarantee of judicial independence lies in building up right traditions, as in Britain, rather than in rigid and mechanical rules of behaviour during a judge's term of office or after his retirement.

Indian News Chronicle

FRIDAY, MAY 27, 1949.

THE MINORITIES AND THE CONSTITUTION

It is not surprising that the Constituent Assembly has given its whole-hearted approval to the report of the Advisory Committee on Minorities involving a reversal of its previous decisions. The radical change in the temper of the country and the bitter lesson learnt by the minorities from the results of the separatist policies pursued by them in the past left no other choice. The few dissentient voices which still struck a separatist note had an effective answer from the Deputy Prime Minister, Sardar Patel, who told them that "if there are any people still in this country who think that they have worked for the two-nation idea and have got their separate homeland, I respectfully appeal to them to go there and enjoy that freedom." It must be said, however, to the credit of the vast majority of the representatives of the minorities in the House that they realised that separate electorates and reservations of seats were not only repugnant to the ideal of secular democracy but also harmful to the minorities' own interests. As a matter of fact the initiative in the Advisory Committee to get the old decision to retain reservation of seats for minorities for a limited period reversed was taken by a representative of one of the minority communities. There was a healthy recognition on all sides that the pernicious devices of separate electorates and reservation of seats invented by the British to sow dissensions among the different communities, far from helping the minorities, would only keep them isolated from the majority and, in Sardar Patel's words, make them permanent outcastes.

As to the exception made in the case of Harijans, including Sikh Harijans, it was readily conceded by all sections that it was a concession not to a religious community but to those who had suffered from centuries of social disabilities and needed safeguards to help them to come up to the level of other classes and compete on equal terms with them for a share in the political life of the country. The inclusion of certain classes of Sikhs whose religion did not recognise any caste distinction in this category was somewhat incongruous. As the Deputy Prime Minister frankly explained to the House, he was not quite happy about it. But if the Sikhs felt that they had their Scheduled Castes too and if they entertained the fear that the absence of a concession for these similar to the one the Hindu Scheduled Castes were going to get, many of the Sikhs might get reconverted to Hinduism there was no choice but to accept their demand and give the lie to their fear. But as Sardar Patel rightly warned the members, no one should for a moment forget that even in the case of the Harijans, this concession was temporary. The aim must be to abolish these classifications and caste divisions as early as possible.

It must be clear, however, that if the caste divisions were to be ended with the utmost speed, more drastic action was needed than a mere provision to abolish reservation of seats for the Scheduled Castes after ten years. The Deputy Prime Minister rightly asked members of the Scheduled Castes and Brahmins to forget that they were members of the Scheduled Castes and Brahmins. But before they could forget these differences on the social plane, the Government must help them in forgetting these on the political plane. At present there were only too frequent reminders to the people from the Government about the castes they belonged to and far too many enquiries seeking information about their castes. In courts, in the services, in a hundred and one places wherever people had to give particulars about themselves, they were required to mention their religion and very often their castes. This was a reactionary practice inherited from a past in which no opportunity of fostering caste divisions was missed by the foreign rulers. But why must this practice continue to be followed now? Why must Government agencies be anxious to ascertain a person's caste before they deal with him? Was not the information that the person concerned happened to be an Indian enough for the Government's purposes? Were not senseless questions seeking information about people's castes wholly out of place in a secular democracy? Lastly, as Sardar Patel warned the members of the majority community, the new decision imposed a big responsibility on them. They must justify by their conduct the trust the minorities had willingly reposed in them.

HONG KONG

THE HINDU

FRIDAY, MAY 27, 1949.

RESERVATION GOES

THE decision taken by the Constituent Assembly to abolish reservation of seats in the Legislature for all minorities except the Scheduled classes and certain sections of the Sikhs and to limit even in these cases the period of reservation to ten years, is remarkable in two ways. It represents a vital modification of an earlier decision taken by the Assembly. And it is the result of a spontaneous movement on the part of the minorities in response to the wisdom and generosity displayed by the statesmen who have been at the helm of affairs for the past two years. Sardar Patel pointed out that it was a rather unusual step to reconsider a decision taken by the Assembly, but the peculiar circumstances of the case fully justified it. The original recommendation of the Minorities Sub-Committee to abolish separate electorates but to continue reservation of seats was adopted by the Assembly in August 1947 when the full effects of the partition of India were not clear and when all sections of the people were deeply agitated by the tragic occurrences in the Punjab. It was a time when minorities everywhere felt they faced a dark and uncertain future. And in India the majority, in consonance with its policy of doing everything reasonable to reassure the minorities, felt that though reservation of seats smacked of separatism it would be better to retain it for the time being out of consideration for the more timorous. Since then the evil effects of communalism have become appallingly clear. And that, fortunately, has made most people in India, including the minorities, react strongly against communalism. Though a handful of Muslim Leaguers clinging to the two-nation theory which has worked untold havoc clamour on every conceivable occasion for safeguards and all the other paraphernalia of sub-nationalism, the vast bulk of the Muslims in India as well as the Christians and other smaller minorities are fully convinced that in the new set-up there would be not only no threat to their religion, culture and way of life, but they would have the fullest opportunity to play a worthy part in building up a homogeneous nation on a democratic basis. The unceasing war that the Congress and the Government of India under the lead of Mr. Nehru and Sardar Patel have been waging against communalism in every shape and form has been noted with gratitude, especially by the minorities which would stand most to lose if communalism should come to dominate the country. But the Government of India themselves have felt, and others have pointed out too, that in making an all-out drive against communalism they were handicapped by the fact that the new Constitution, by favouring reservation of seats on a communal basis though for a time, was tolerating vestiges of communalism. It is therefore only logical that as and when public opinion is ripe for it these vestiges should be eliminated. The important thing to note is that the proposal to abolish reservation and the other recommendations of the Advisory Committee were "the result of unanimous agreement," as Mr. Frank Anthony has testified. "They were not imposed decision but were based on friendly understanding, compromise and faith." It is not denied that a few Muslims have expressed themselves opposed to the abolition of reservation and one or two even favoured full-blown separate electorates. But the fact that this handful was not actuated by anything like the legitimate fears of a minority was abundantly clear from the support, not only of other Muslims, but also of other minority representatives to the proposals of the Advisory Committee.

A Muslim member from Madras pleaded for separate electorates on the ground that it was only to represent their views before the Government or Legislature that Muslims wanted them. "What we want is the right to self-expression, the right of being heard and the right of association." That would suggest that if there was neither separate electorates nor reservation of seats Muslims would have no voice in the Legislature at all. For this supposition there is not the slightest warrant. In the Congress organisation Muslims have exercised an influence out of all proportion to their numbers and held the highest offices. It is inconceivable that when the Congress sets up candidates for the general election under the new Constitution it will not select a fair proportion from Muslims. It may be that these candidates would not be acceptable to the extreme communalists who want, as the speaker above mentioned maintained, to perpetuate "recognition of the difference between one group of people and another." The truth about the clamour for political safeguards for communal and religious minorities was revealed by Dr. H. C. Mookerji. He said that "a review of opinions he had received from different sections of the Indian Christian community revealed that only the upper middle class who wanted political power demanded political safeguards." There is nothing objectionable in the desire to share political power; but when that power is claimed in the name of a community and is sought to be utilised for its aggrandisement it becomes an obstacle to national unity and a source of weakness.

The emergence of political parties based on economic and social programmes has been largely impeded by the communal politics which separate electorates fostered. When true political parties spring up the Muslims and other minorities will find in them the amplest opportunities to align themselves with members of other communities on the more natural basis of community of interests and aspirations. It is from this point of view that the apparently illogical retention of reserved seats for the Scheduled classes and for certain sections of the Sikhs may be regarded as not wholly objectionable. The Scheduled classes are still very backward socially and economically compared with others and their representatives feel that reservation for a few years would be needed to enable them to build up their strength. The Minority Committee has deferred to their wishes. When a similar plea was put forward on behalf of the more backward sections of the Sikhs it could not very well be turned down, especially as the Sikhs have suffered grievously and there is a general desire that they should be treated as generously as possible. But Sardar Patel did not hide from them his own feeling that to add to the Scheduled classes is to take a retrograde step. It is to be hoped that long before the ten-year term for which reservation is extended lapses, the Scheduled classes, both Hindu and Sikh, will come to realise as other minorities have done that any isolation from the main stream of national life cannot but be disadvantageous to themselves. Mr. Nehru, whom no one suspects of communal pride or chauvinism of any sort, put the case against separatism in a nutshell when he said, "Where you are up against a full-blooded democracy, if you seek to give safeguards to a minority, you isolate it, it may be you protect it to some extent, but at what cost? At the cost of isolating it and keeping it away from the main current in which the majority is going, at the cost of forfeiting the inner sympathy and fellow-feeling of that majority."

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Hindu 27-5-

HISTORIC TURN IN OUR DESTINY

DECISION ON MINORITY REPRESENTATION

PANDIT NEHRU'S APPEAL FOR GOODWILL

NEW DELHI, May 26.

The Prime Minister, Pandit Jawaharlal Nehru, to-day described as "historic" Sardar Patel's motion in the Constituent Assembly for abolition of reservation of seats to minorities, except the Scheduled Castes.

Intervening in the debate, Pandit Nehru said, "There has been such abundance of goodwill shown towards this motion that it is hardly necessary for me to intervene in support of it, but I felt the urge to do so, because I wished to associate myself with this historic turn in our destiny (cheers). It is a motion which, means not only discarding something that was evil but turning back upon it and determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation. All of us here, I believe, are convinced that this business of separatism, whether it took the shape of separate electorates or other shapes, has done a tremendous deal of evil to our country and to our people.

"We came to the conclusion some time back that we must get rid of separate electorates. That was the major evil. Reluctantly we agreed to carry on with some measure of reservation. Reluctantly we did so for two reasons. Firstly, we felt that we could not remove that without the goodwill of the minorities concerned. It was for them to take the lead or to say that they did not want it. For the majority to force it down their throats would not be fair to the various assurances we have given in the past and, otherwise too, it did not look the right thing to do. Secondly, we agreed to that reservation because in our heart of hearts we were not sure of ourselves and of our own people. How would they function when all these reservations were removed? We agreed to reservations, but always there was this doubt in our minds whether we had not shown weakness in dealing with a thing that was wrong. So when this matter came up in another context and it was proposed that we do away with all reservations except in the case of the Scheduled Classes, for my part I accepted that with alacrity and with a feeling of great relief, because I had been fighting in my own mind and heart against this business of keeping up some measure of separatism in our political domain.

"RIGHT THING TO DO"

"And the more I thought of it, the more I felt that it was the right thing to do not only from the point of view of pure nationalism, which it is, but also the separate and individual view-points of each group, the majority and the minority. We all call ourselves nationalists but perhaps in the mind of each the colour and texture of nationalism that is present is something different from what it is in the mind of the other. We call ourselves nationalists and rightly so, and yet few of us are free from those separatist tendencies, whether they are communal, provincial or other. Yet, because we have those tendencies, it does not necessarily follow that we should surrender to them all the time. It does follow that we should not take the cloak of nationalism to cover those bad tendencies".

Looking objectively, said Pandit Nehru, there was some point in having reservation or any other kind of safeguard for a minority where there was autocratic rule or foreign rule, but as soon as there was something that could be called political democracy, this kind of reservation, instead of helping the party to be safeguarded and helped, was likely actually to turn against it. Where there was a third party or where there was autocratic rule, it was possible that these safeguards might be good or that the monarch or foreign ruler might play off one against the other. "But where you are up against a full-blooded democracy, if you seek to give safeguards to a minority, you isolate it, maybe you protect it to some extent, but at what a cost! At the cost of isolating it and keeping it away from the main current in which the majority is going—I am talking on a political plane, of course—at the cost of forfeiting that inner sympathy and fellow-feeling of that majority. Obviously, if it is a democracy, in the long run or in the short run it is the will of the majority that will prevail. The result is that the minority may get one anna in the rupee of protection at the cost of the remaining fifteen annas. That is not good enough.

DUTY OF MAJORITY COMMUNITY

"Look at it from the point of view of the majority. It is all very well for a majority to feel that it is strong in numbers and in other ways and therefore, it could afford to ride roughshod over the wishes of a minority. If a majority feels that way, it is not only exceedingly mistaken, but it has not learnt any lesson from history, because however, big a majority, if injustice is done to minorities, it rankles and it is a running sore and that majority ultimately suffers from it. So, ultimately, the only way to proceed about it, whether from the point of view of the minority or the majority, is to remove every barrier that separates them in the political domain, so that they may develop a way of working together."

That did not mean, of course, a kind of regimented working, said Pandit Nehru. There might be many groups and parties but not on the minority, majority or religious plane but other planes, social or economic.

Frankly, said Pandit Nehru, he would have liked to go further and put an end to the reservation in regard to the Scheduled Castes too, but he also realised that in the present state of affairs in India, that would not be a desirable thing to do. He tried to look upon this problem not in the sense of a religious minority but rather in the sense of helping backward groups in the country. He was glad that this reservation would be limited to a fixed period of ten years.

"Doing away with reservation" Pandit Nehru went on, "is not only a good thing in itself, good for all concerned and more especially for the minorities, but psychologically a very good move for the nation and for the world. It shows that we are really sincere about having secular democracy. I use the words secular democracy as many other people use them, but sometimes I have the feeling that they are used a bit too much by people who do not understand their significance. It is an ideal we aim at and yet perhaps very few of us, whether we are Hindus or Muslims or Sikhs or Christians, can claim to have no prejudices and no taint of communalism.

AN ACT OF FAITH.

"I do not myself particularly fancy any one of us trying to deliver sermons and homilies to the other as to how he should behave, or one group telling the other—whether it is the minority group telling the majority, 'You should do this or that', or whether it is the majority telling the minority, 'You should do this or that to gain our goodwill'. Of course, something has to be done to gain goodwill. But goodwill or loyalty or affection is hardly a thing which is obtained by sermonising. It develops because of certain circumstances, certain appeals of the mind and heart and the realisation of what is really good for one. Now when this House is going to take a major decision, which will affect our future greatly, let us be clear in our minds that in order to proceed further, each one of us, whether belonging to a minority or majority, should try to function in a way to gain the goodwill of the other group or individual."

Pandit Nehru said that Mahatma Gandhi stressed the good in every individual or group and drew the good out of him and made him function to the best of his ability. That was the only way of going ahead. Mr. Frank Anthony had reminded the House that the motion before it was an act of faith for all, particularly for the majority community because it would have to behave towards others in a generous, fair and just way. "Let us live up to this faith," said Pandit Nehru, amidst cheers.

The Assembly (as reported elsewhere) adopted Sardar Patel's motion.

CONSTITUTION OF INDIA

FLEXIBILITY MUST BE ENSURED

SIR S. VARADACHARIAR'S ADVICE

NEW DELHI, May 26.

"The stability of a community, especially if it is to be a democratic community, requires that there should be no considerable class with a burning sense of injustice. Once the necessity for some fundamental change in the existing order is established as the only alternative to a violent upheaval, it is best that this ideal and the resolve to work up to it are acclaimed so as to remove all doubts from the minds of different sections of the community and call upon them to co-operate towards the realisation of that ideal", declared Sir S. Varadachariar in the course of a lecture under the auspices of the Indian Council of World Affairs last evening. He was speaking on "fundamental rights and directive principles" in the new constitution. Pandit Hridayanath Kunzru presided.

Sir S. Varadachariar said: "Unless all men are united in a common zeal and a high endeavour, the forces of disunity will sooner or later triumph. The absence of sanction in the form of judicial remedies is not of much consequence. The ultimate sanction after all is the strength of public opinion and the clear statement of the ideal as well as of the means and measures by which it is hoped to achieve it. Probably it is the best method of guiding and strengthening the public opinion which is so essential for the success of democracy".

He added that as the working of democracy was based on consent, the principle of social justice was not only a question of ethics, but also a precondition of the functioning of democracy.

Sir S. Varadachariar did not think that the present Constituent Assembly had any right to fetter the exercise of sovereign legislative powers by any of its successors. Even as a question of expediency, he felt that it was undesirable to lay down any rigid procedure for the amendment of any constitutional provision however important it might be. "The worth of most constitutions is relative; the true question is what best suits a particular country at a particular time." "If one generation could bind another, the dead and not the living would rule", he said, quoting Jefferson.

"It is in my opinion essential that the constitution must be so framed that the executive and the judiciary will be able to function harmoniously even while each is discharging its duties efficiently and that no strain or stress is imposed on the loyalty of the citizens to either organ of Government", Sir S. Varadachariar said.

Sir S. Varadachariar disagreed with the uncharitable criticism levelled against those who drafted the constitution that they had merely copied a few provisions from this constitution and a few provisions from that. "There is after all nothing new under the sun and it is only right that those responsible for the drafting of the constitution should have tried to benefit by the experience of other countries in this task", he concluded.—PTI.

The Bombay Chronicle

27-5-49

In non-violent swaraj, there can be no encroachment upon just rights; contrariwise, no one can possess unjust rights.

—MAHATMA GANDHI

EXIT RESERVATION

The Constituent Assembly has done an invaluable service to the country by adopting Sardar Patel's resolution abolishing reservation for all minorities except the Scheduled castes, as amended by Pandit Thakurdas's amendment suggesting that reservation for the Scheduled Castes should be only for a period of ten years. This decision is a great constitutional advance and is particularly notable as it almost reverses the previous decisions of the Constituent Assembly embodied in the Draft Constitution. That Constitution provided in Articles 292 and 294 that seats shall be reserved in the House of the People and also in the Legislative Assemblies of the States for the Muslim community, the Scheduled Castes, the Scheduled Tribes and the Indian Christian community in Madras and Bombay. Since then, however, there has been a silent, steady change of opinion in favour of abolishing the so-called safeguard in the shape of reservation. As regards separate communal electorates, the Assembly has all along almost unanimously condemned them as being anti-national and the root cause of the partition of the country.

The growing feeling in favour of abolishing reservation found full expression at the meeting of the Advisory Committee of the Constituent Assembly on May 11. The Committee was fully representative of all communities, but this body of forty members adopted, with only one dissentient vote, the proposal to drop reservation for all communities except the Scheduled Castes. The exception was really not desirable. For if communal reservation is harmful to the other communities as isolating them from the rest of the nation and as weakening their self-reliance, it was even more harmful to the Scheduled Castes as they had already been long segregated from the other communities. But so passionately were these castes attached to reservation, at least as a temporary means of guaranteeing to them due representation—which they had reason to fear they would not get immediately without reservation—that it was thought a serviceable compromise to continue their reservation for ten years. Thereupon the Sikhs, who after all their sufferings generously waived their claims to reservation for the bulk of the community, claimed in the name of consistency reservation for some Hindu Depressed Castes who had recently been converts to their religion. They made the claim on the ground that these castes continued to be more or less untouchable. Conceding this claim was considered a small price for the Sikh community as a whole renouncing its claim to reservation, and the Sikh Depressed Castes were included among the Scheduled castes.

As the Advisory Committee's resolution was almost unanimous and it was supported by Sardar Patel in the Constituent Assembly with a most forceful speech, its adoption by the House was a foregone conclusion. But it was doubtful whether the Muslim members would support it. However, though one or two of them went so far as to claim separate electorates the majority of them supported it. Mr. Nazirudin of West Bengal aptly described the resolution as "a landmark in the country". Begum Aizaz Rasul (U.P.), who "whole-heartedly" supported the resolution, claimed that the Muslims of her province were absolutely behind her. This view was endorsed by Mr Mohammed Ismail, also of U.P., who gave his "unstinted" support to the resolution. Maulana Hasrat Mohani did likewise and appealed to the House not to have "any communal parties amongst us". If after such speeches from Muslim members, there were any doubts among the majority of the Muslim members they must have been dispelled by the most earnest appeal of Pandit Nehru to the House to abjure, for once and all, thinking in terms of communities, if they were to be true to the ideal of a secular democracy, to which they were pledged. He explained at some length, as Sardar Patel had done before, that reservation was even more harmful to the minorities concerned than to the nation. It was in fact this view that persuaded the Scheduled Caste representatives and the House in general to accept the amendment that the reservation for these castes should be only for ten years.

The decision of the Assembly is indeed an epoch-making event in the constitutional history of India. It marks a revulsion of feeling, however belated, against the ancient tradition in India of discussing politics in communal terms, a tradition which the British regime diabolically used against the country by foisting upon it communal electorates and communal reservation. We have at long last abolished both these anti-national devices. But the Assembly's decision puts a heavy responsibility on the majority community as well as the minorities. They must all freely and actively intermix to combat the old isolation. The majority community, whose position is unquestionably strong, must shun communal politics of every kind as poison, as otherwise it may slowly spread to the minorities and open once again all sorts of communal claims. The greatest care should be taken at the next elections to see that merit is valued in a person irrespective of his community. The minority candidates too should strive to rely wholly on merit, in one political party or other, and not at all on communal support. As a majority party in the country, the Congress, which has taken the lead in fighting communalism in politics and in abolishing the reservation as well as separate electorates, should by action reassure the minority communities that the constitutional changes would not be unfairly used against them. It would also be to the advantage of the minorities to join the Congress in large numbers and strive incessantly to excel in non-communal, national service so as to win by merit the support of the electorate.

The Tribune

Ambala Cantt., May 28, 1949

A LANDMARK

Both the debate and the decision in the Constituent Assembly, on the proposal to end reservation of seats for all minorities, except the Scheduled Castes, mark a turning point in the history of the nation. More important than the decision to declare India a republic, more important than the question of whether or not India should remain within the Commonwealth, this ending of the practice of counting heads religionwise for political and economic purposes restores to us, as a people, our organic unity. A sordid chapter in the life of this nation has been closed. We drifted over a period of more than 150 years from safeguards to separation and from separation to partition. Fear drives one relentlessly to the logical conclusion of isolation; minorities in India cultivated this element of fear. An alien Government has always to find justification for its continued existence; British rule justified itself on the ground of its obligation to protect the minorities. Neat little fences were built round each community and they were asked if they felt comfortable and safe, or would they like to have the fences raised a little higher. To fear those who professed another faith was considered natural because it secured for the alien the position of impartial adjudicator. Started along this track, the religious communities of India rapidly developed into mutually exclusive groups, each afraid of social, economic and political encroachment by the other. Social and religious systems, thrown on their defensive as it were, lost their dynamic quality and became petrified. One's religion became his way of life and every difference and distinctive outward aspect was accentuated until those who professed one faith came to believe that the other faith was based on diametrically opposite and contradictory tenets. At every stage, fear of each other prevented us from retracing our steps with the result that we were relentlessly hurried forward into partition. It was necessary, perhaps, to carry communalism to its logical conclusion to realise that it had no place in our national life. The nightmare chapter has been closed.

The high level of debate and the far-reaching decision taken in the Constituent Assembly are the first fruits of the supreme statesmanship, which stood squarely against the forces of communalism which swept this country some 20 months ago. We have regained our sanity. We must preserve it at all costs. We have adopted an essential principle in human relationship, a principle which will make for our growth to our full stature not only as a nation but also in our international relationship. It is the spirit of broad tolerance that makes it possible for man and man to live and help live to the mutual benefit of each. It is the same spirit between nation and nation which will ultimately bring about world peace. We have, therefore, by this decision made peace with our neighbour both in the most restricted and in the widest sense of the term. It is important to remember, however, that we have adopted a principle and have yet to make it work. It was appropriate that Pandit Jawaharlal Nehru should have intervened in the debate impelled by the urge to associate himself with what he described as "this historic turn in our destiny." The cause needs the man as much as the man needs the cause for each to attain fulfilment.

"It is an ideal we aim at", said Pandit Nehru, "and yet, perhaps, very few of us whether we are Hindus, or Muslims, or Sikhs, Christians, can claim to have no prejudices and no taint of communalism ..... something has to be done to gain goodwill, but goodwill, or loyalty, or affection is hardly a thing which is obtained by sermonising. It develops because of certain circumstances, certain appeals of the mind and heart and the realisation of what is really good for one ..... Let us bet clear in our minds that in order to proceed further, each one of us whether belonging to a minority or a majority, should try to function in such a way as to gain the goodwill of the other group or individual." These are words uttered at once from the mind and heart, and should find an answering echo in the mind and heart of every Indian. The Constituent Assembly has cleared away the needs. It is for us now to grow the crop of national goodwill.

India Ltd. Rules 28-5

LOCATION OF SUPREME COURT

DISCUSSION IN CONSAMBLY

NEW DELHI, May 27.

The question of the seat of the Supreme Court evoked some discussion when the Constituent Assembly today took up Article 108. The Article reads: "The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may with the approval of the President from time to time appoint."

Mr. Kamath moved an amendment suggesting that "the Supreme Court shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint." He pointed out that the capital of India had not yet been decided upon finally and there was no reason why the House should specify in the constitution that the Supreme Court should sit in Delhi.

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Dr. Ambedkar moved an amendment substituting two new Articles in the place of the original Article. They read. "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

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The article as amended by Dr. Ambedkar was then adopted.

The Article relating to the salaries and allowances of the Judges was held over.

Appointment of Acting Chief Justice

Earlier the Assembly adopted Article 105 of the draft constitution relating to the appointment of Acting Chief Justice of the Supreme Court. The Article provides that when the office of the Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise unable to perform the duties of his office, the same shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

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One of the amendments required the consent of the President prior to the appointment of any 'ad hoc' judge.

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The House held over consideration of six Articles from 109 to 114 concerning the jurisdiction of the Supreme Court because many of the provisions referred to reservation with regard to the States.

Some members said that the matter as to the position of States mentioned in Part III being schedule of the constitution was considered in order to bring the States under the Third Schedule (Indian States) on the same level as the States mentioned in Part I (Provinces). If that was decided, he said, it was unnecessary to discuss the reservation regarding Indian States.

The House agreed to the suggestion.

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Four Articles from 115 to 118 were adopted. They related to the conferment on the Supreme Court of powers to issue certain writs, ancillary powers of Supreme Court, enforcement of decrees and orders of the Supreme Court and law declared by the Supreme Court to be binding on all courts.

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India Gk Rues 28-5

The Tribune

Ambala Cantt., May 28, 1949

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had sufficient control over its own employees, its independence would become loose. If it looked to other quarters for the appointment of its personnel, its independence would be sapped. At the same time the interests of the taxpayer had also to be safeguarded. Hence provision had been made for consultation by the Chief Justice with the executive in the matter of salaries and allowances.

Mr. Ananatasayanam Ayyangar said he did not see the wisdom of the amendment. An attempt had been made to bring this Article in line with that in the Government of India Act. The effect of the amendment would be to give the President autonomous powers.

Pandit Thakurdas Bhargava (East Punjab), opposing Dr. Ambedkar's amendment, said it was not right to play with the powers of the Chief Justice, whose integrity should not be doubted. If the Executive was allowed to interfere with the powers of the Judiciary, its powers would be reduced.

Krishna Chandra Sharma (U. P.) said that as Mr. Jaspat Roy had pointed out, the question of independence or dignity of the Chief Justice did not arise in connection with the fixing of salaries. The President would know much better about the finances of the country than the Chief Justice and hence his approval was necessary.

Dr. B. R. Ambedkar, replying to the debate, said there was no doubt that the House in general was agreed that the independence of the Judiciary from the Executive should be made clear and as definite as could be made by law. At the same time there was the fear that in the name of independence of the Judiciary, they might be creating an "Imperium in Imperio" (a Government within a Government). The Article he had proposed steered a middle course. It refused to create an "*imperium in imperio*" and at the same time gave the Judiciary as much independence as was necessary for the purpose of administering justice without fear or favour of the Executive.

Dr. Ambedkar's Article as amended by him was accepted and the House adjourned till Monday.—A.P.I.

REPRESENTATION FOR KASHMIR IN ASSEMBLY

N. G. AYYANGAR'S MOTION ADOPTED

The Constituent Assembly on Friday adopted Mr N Gopalaswami Ayyangar's motion to enable the Ruler of Kashmir to nominate, on the advice of his Prime Minister, representatives of the State to the Indian Constituent Assembly

Kashmir is entitled to send four members—one for every million of the population.

An amendment moved by Prof K. T. Shah suggesting that the representatives should be chosen by the State Praja Sabha, elected in the winter of 1946-47, was rejected. Pandit Nehru described Prof Shah's proposition as "monstrous" and the circumstances of the election of the Praja Sabha as "fantastic and farcical".

Commending his motion to the House Mr Ayyangar said that under Constituent Assembly rules now in force no less than half of the seats allotted to the States had to be filled by elected members of the Legislatures of the States concerned and the remainder to be nominated by the Ruler himself. At present in Kashmir the Praja Sabha was not functioning and the new national Assembly had not come into existence. In the circumstances, the House had to choose a method by which it could get Kashmir representatives into the Assembly, taking the present facts into consideration. Members would concede that it was very important that Kashmir, which was now a part of India, should be represented in the Assembly.

Mr Ayyangar wished that Kashmir's representation had been brought about much earlier than now, but various things had conspired to prevent it. "We are today in a position to bring to this House four persons who could be said to be fairly representative of the population of Kashmir. The point I wish to urge is that, while two of these representatives would, in any case under the present rule, be persons who could be nominated by the Ruler, we are suggesting, that all the four persons (one representative for every million of the population) should be nominated by the Ruler on the advice of his Prime Minister. The Prime Minister happens to represent the largest political party in the State. Therefore, it is only proper that the head of this party, who is also the Prime Minister, should have the privilege of advising the Ruler as to who could be the proper representatives of Kashmir in a Constituent Assembly of this kind. Under the existing circumstances that is about the best that could be done, and it would introduce a certain amount of intimate relationship between this Constituent Assembly and the Government and people of Kashmir.

STATE'S NOMENCLATURE

Representatives of Kashmir would come to the Constituent Assembly and take part in the further proceedings of the House. Most of the Articles relating to provinces and States had yet to come up for consideration, and it was only right that Kashmir should have the right to participate in the discussions which would finalize those Articles. It was suggested in one of the amendments tabled that instead of "Kashmir" the words "Jammu and Kashmir" be substituted. "Jammu and Kashmir" no doubt described the State better. But the reason why in his motion the word "Kashmir" was used was that in all statutory enactments and rules framed so far, the State was mentioned as "Kashmir". If the name was changed now all other statutes and rules would also have to be changed. Both "Jammu and Kashmir" and "Kashmir" meant the same thing.

Pandit Lakshmikanta Maitra (West Bengal) asked whether any instructions would be issued to the Kashmir Government that representatives of Ladakh and Jammu should be among the four representatives and that all the four should not be from the Kashmir Valley.

Mr Ayyangar replied: "Kashmir in this motion means the whole of Jammu and Kashmir, the sovereignty over the whole of which still remains with the Government of the State. We look upon the State as a whole. We do not recognize anything that may have happened as a result of the military operations which have been suspended. We want to bring into the Assembly persons who will represent the State as a whole and the Prime Minister, as the person who represents the Government as also the largest political party, is in our opinion, the best person to make recommendations to the Ruler, who will nominate them on such recommendations

AMENDMENT BY PROF. SHAH

Prof K. T. Shah moved an amendment seeking to change the name "Kashmir" in the motion to "Jammu and Kashmir" and wanting the seats allocated to the State in the Assembly to be filled only pending the holding of a plebiscite by the U.N. and without prejudice to its results. He also asked in his amendment that the seats to be filled by the Praja Sabha of the State.

Prof Shah asked why the State should not be properly described, it was not a mere verbal change he was seeking to make. Description of the State as "Kashmir" was an error which had crept into all documents and should not be allowed to be perpetuated. Until 1933, though the State was under one Ruler, the administration of Jammu and Kashmir was different.

When dealing with the plebiscite Prof Shah said the accession of the State was not complete. A point of order was raised by Dr Pattabhi Sitaramayya whether it could be discussed as accession of the State was complete and unconditional. Dr Pattabhi was supported by Pandit Nehru, Mr Balkrishna Sarma and others. Dr Rajendra Prasad upheld the objection and said the motion was concerned with representation of the State in the Assembly and Prof Shah's point was irrelevant. The portion of Prof Shah's amendment referring to the plebiscite was ruled out of order.

About the method of filling the seats Prof Shah said that half the seats allocated to other States were filled by elected representatives of the States and half only by nomination. He asked why a departure should be made in the case of Kashmir alone. In view of the extraordinary situation in that State, he wanted all four members from Kashmir to be elected. It was not proper to leave the choice of representatives to the judgment of one man.

When Prof Shah said that India had spent crores of rupees in Kashmir and that many Indian lives had been lost there, Pandit Nehru raised an objection that the remarks were irrelevant. The president, Dr Rajendra Prasad, asked Prof Shah to confine himself to the subject of his amendment.

Mr H. V. Kamath (C.P.) said the step that the House was taking in providing for representatives of Kashmir State to sit in the Constituent Assembly could not be overestimated. In view of the explanation given by Mr Gopalaswami Ayyangar that the name "Kashmir" stood for the whole State, there was no justification for Prof Shah's amendment. There were newspaper reports that the Maharaja of Kashmir had gone on a short holiday. He hoped the amendment of Mr Gopalaswami Ayyangar would be implemented before the Ruler left the State.

Maulana Hasrat Mohani (U.P.) said there was no need to send Kashmir representatives to the Constituent Assembly at this stage. Referring to an earlier interruption by Pandit Nehru, he added: "Pandit Nehru got angry and said that Kashmir had acceded to India and, therefore, had every right to send its representatives here. I am doubtful whether he was absolutely right in saying so, because not once or twice, but many times he has said that the accession depends on the plebiscite. Now he has made up his mind, he has created history and his move is that this plebiscite will never take place. Therefore he says that the accession is complete and there is no doubt about that."

Even admitting that accession was complete, the question of nominating representatives to the Constituent Assembly did not arise until the status of the Kashmir Government and the status of the Maharaja were decided.

K. T. SHAH'S PROPOSAL OPPOSED

The Prime Minister, Pandit Nehru, intervening in the debate, said that he had great admiration for the erudition and learning of Prof Shah, but he had followed with some surprise not only what Prof Shah said today but what he had said and done in regard to Kashmir for a number of years. Speaking not as the Prime Minister, but as a Kashmiri and as an Indian who had been connected with the fight for freedom in Kashmir, Pandit Nehru said: "It has amazed me to hear Prof Shah propose that the so-called Praja Sabha of Kashmir should send representatives to this House. If Prof Shah knows anything about Kashmir, he should know that there is nothing more bogus than that Praja Sabha. He ought to know that the circumstances under which the last elections were held were fantastic and farcical. He ought to know that it was said by all decent people in Kashmir. It was held during the winter when all the roads were impassable, when the passes could not be crossed, when, in fact, it was impossible for voters to move about. But apart from that when the National Conference of Kashmir, in spite of all difficulties, including the difficulty of Sheikh Abdullah and other leaders being in prison, decided to contest the elections, many of their candidates were arrested and it was made quite clear that practically speaking they would just not be allowed to stand. So they decided to boycott the elections with the result that the whole national movement of Kashmir boycotted them, just as the national movement in India in 1920 boycotted the elections. And it was an amazingly successful boycott and the percentage of voting was almost negligible.

"The type of people who went in were the type who had opposed the freedom movement throughout, who had done every injury possible to the idea of freedom of Kashmir till then. And subsequently when Kashmir became much freer than it ever was and got this new status, some of them sought refuge in Pakistan. This bogus body is really not a body at all. It is a disembodied spirit. It is not there and has not met for the last two or three years. Many of its members are just not traceable. Prof Shah ought to know that it is a monstrous proposition to suggest that this Praja Sabha should send members to this House."

Pandit Nehru agreed that the method recommended in the motion was not 100% correct, but what better method was there, he asked.

If he had heard Maulana Hasrat Mohani correctly, said Pandit Nehru, he would agree with the Maulana that it would have been better and more graceful for them to have had representatives of Kashmir in the Assembly much earlier, but the fact that that was not done was no reason to continue the error in future.

Pandit Nehru suggested that in order to avoid confusion in people's mind about the words "Kashmir State," the words "otherwise known as the State of Jammu and Kashmir" might be added in bracket

MR AYYANGAR'S REPLY

Mr Gopalaswami Ayyangar, replying to the debate, said that the accession of Kashmir was perfectly correct. "I have a copy of that document before me. The accession is complete. No doubt we have offered to have a plebiscite taken when the conditions are created for the holding of a proper fair and impartial plebiscite. But that plebiscite is merely for the purpose of giving the people of the State the opportunity for expressing their will. The expression of their will should be only in the direction of whether they would ratify the accession that has already taken place, not ratify in the sense that that act of ratification is necessary for the completion of the accession. But if the plebiscite produces a verdict which is against the continuance of accession to India of the Kashmir State, then what we are committed to is simply that we shall not stand in the way of Kashmir separating itself from India

"Under the provisions of the Indian Independence Act, where a State accedes and subsequently wishes to get out of the act of accession, that is, to separate itself from the main Dominion, it cannot do so except with the consent of that Dominion."

The Government of India's commitment, Mr Ayyangar said, was simply that if the verdict of the plebiscite was against India, then India would not stand in the way of the wishes of the people of Kashmir being given effect to. "So the statement that the accession is at present complete, is a perfectly correct description of the existing state of things. We are not bringing representatives of the State to this House for the purpose of placing their seal on the act of accession. We are giving them an opportunity for the exercise of the rights they have obtained by the fact that accession has already taken place."

NO DELAY

Pointing out that this was the first meeting of the Constituent Assembly in its constitution making capacity since operations had been suspended by the cease-fire, Mr Ayyangar said: "I do not think that we can be convicted of delay in bringing this proposition forward at this meeting".

Mr Ayyangar accepted Pandit Nehru's suggestion that the words "otherwise known as the State of Jammu and Kashmir" be inserted within brackets after the words "the State of Kashmir" and moved an amendment to that effect.

Referring to Mr Kamath's suggestion to substitute the expression "premier" for "prime minister", Mr Ayyangar said that in the Kashmir Constitution the expression "prime minister" was used and it had been respected.

Prof Shah's amendment was rejected.

The House adopted Mr Ayyangar's motion and his amendment adding the words "otherwise known as the State of Jammu and Kashmir" after "the State of Kashmir".

Resuming consideration of the Articles of the Draft Constitution regarding federal judicature, the House passed a number of Articles without discussion. The Article relating to the salaries and allowances of judges was held over. The subsequent Articles 105, 106 and 107, on the appointment of an acting Chief Justice, the appointment of ad hoc judges and the attendance of retired judges at sittings of the Supreme Court, were adopted with minor verbal amendments.

SUPREME COURT'S LOCATION

There was some discussion on the seat of the Supreme Court when the House took up Article 108. The Article reads: "The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President, from time to time appoint."

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Dr Ambedkar explained that the object of the new Article was to make better provisions for the independence of the Supreme Court and to make provisions about their expenses being a charge on the revenues of India.

Mr T. T. Krishnamachari (Madras) said that he supported Dr Ambedkar's amendment, but suggested that the provision in the amendment regarding expenses should be transferred to Article 92 dealing with all items chargeable to the revenues of India, which Article had been deferred. This was necessary to enable the people to know definitely what items had been charged to the revenues of India.

He said that giving too much powers to particular departments would create many watertight compartments which would act as bottlenecks in administration.

INDEPENDENCE OF JUDICIARY

Mr K. M. Munshi (Bombay) supporting Dr Ambedkar's amendment said that though the Constitution had not accepted the doctrine of separation of powers, it had seen to it that the independence of the judiciary was maintained to the utmost extent. Any fear therefore that the independence of the judiciary would not be maintained was an unfounded one.

Mr Alladi Krishnaswami Iyer, commending the amendment to the acceptance of the House, said that unless the judiciary had sufficient control over its own employees, its independence would become loose. If it looked to other quarters for the appointment of its personnel, its independence would be sapped. At the same time the interests of the taxpayer had also to be safeguarded. Hence provision had been made for consultation by the Chief Justice with the Executive in the matter of salaries and allowances.

Mr Anantasayanam Ayyangar said he did not see the wisdom of the amendment. An attempt had been made to bring this Article in line with that in the Government of India Act. The effect of the amendment would be to give the President autonomous powers.

Pandit Thakurdas Bhargava (East Punjab) opposing Dr Ambedkar's amendment, said it was not right to play with the powers of the Chief Justice, whose integrity should not be doubted. If the executive was allowed to interfere with the powers of the judiciary, the latter's powers would be restricted.

Mr Krishna Chandra Sharma said that the question of independence or the dignity of the Chief Justice did not arise in connexion with the fixing of salaries. The President would know much better about the finances of the country than the Chief Justice and hence his approval was necessary.

Dr B R. Ambedkar, replying to the debate, said there was no doubt that the House in general was agreed that the independence of the judiciary from the executive should be made as clear and as definite as could be by law. At the same time, there was the fear that in the name of independence of the judiciary, they might be creating an "imperium in imperio" (a Government within a Government). The Article he had proposed steered a middle course. It refused to create an "imperium in imperio" and at the same time gave the judiciary as much independence as was necessary for the purpose of administering justice without fear or favour of the executive.

Dr Ambedkar's Article, as amended by him, was accepted and the House adjourned till Monday.

ELECTORAL RESERVATIONS

Replying, on Thursday, to the debate on the motion forthe abolition of electoral reservations for all minorities, except Scheduled Castes, Sardar Patel said that the Minorities' Advisory Committee was not aware of Sir Mohammed Saadullah's opinions. (Earlier parts of Sardar Patel's speech appeared in yesterday's issue.)

Sardar Patel said he did not know whether Sir Mohammed had consulted Maulana Azad or not, but Sir Mohammed had said that Maulana Azad remained neutral at the last meeting of the committee. Sir Mohammed claimed to know the Maulana's mind more than Sardar Patel did, but he (Sardar Patel) could tell Sir Mohammed that the Maulana was "not a cypher". Maulana Azad had the courage of his convictions and if he felt that it was against the interests of his community to abolish reservation, he would have immediately protested. But he did not do so because he knew that what was being done was right (cheers).

Therefore, if Sir Mohammed interpreted Maulana Azad's silence as neutrality or dissent, he was much mistaken. Maulana Azad had stood up against his own community when he felt he was right. Sardar Patel was sure that if ever it had occurred to Maulana Azad that India was a country of two nations, after the division he would not have remained here. But there were people who worked for separation, who claimed all through their lives that there were two nations and yet claimed to represent here the remaining nation.

"I am surprised that Sir Mohammed claims to represent the real masses of Muslims in this country now. How can he? I am amazed that he makes that claim. I represent the Muslims more than he can ever do (cheers). He can never do that by the methods that he has followed all his life. He must change them."

MR LARI'S AMENDMENT

About Mr Lari's amendment, Sardar Patel said he was glad that Mr Lari had admitted that the committee's approach was right. There was no question of the committee asking a wrong approach because no initiative and decision was left to the minorities in support of this demand for proportional representation. Mr Lari had quoted the instance of Ireland. But Ireland was smaller than a single district of the U.P. There was a vast country and even the introduction of adult franchise with so much illiteracy was a very difficult task. To introduce complications of the nature suggested by Mr Lari would be a very dangerous experiment. If Mr Lari was satisfied that reservation was bad, he should not try to bring it in "by the back door".

Addressing himself to the Sikhs, Sardar Patel said he had always held the Sikh community in considerable respect and admiration. He had been glad their friend even though they might disagree that claim sometimes. He would give them reservation, but he felt it was not in their interests. To compare with Scheduled Castes for the Sikh did not redound to the credit of the Sikh community

PATEL'S APPEAL TO SIKHS

Some Sikhs who wanted reservation did not suffer from difficulties experienced by Scheduled Castes. Fear would wreck and undermine the cause of the Sikhs. "I appeal to you not to quarrel for a concession here and a concession there. I would ask you, Sikhs, to take control of the country and rule it. You will be able to rule because you have got the resources. You have got courage. In every walk of life you have proved your mettle. I am asking even Scheduled Castes to forget that they are Scheduled Castes, although it is very difficult for them to do so.

"You have acknowledged with gratefulness the concessions shown to you. I am grateful to you. In this country we want an atmosphere of peace and harmony, not friction and distrust.

He felt proud that today there was almost unanimous in their desire to remove "past blots in our constitution" (loud cheers).

The motion and the amendments were then put to the vote. The House rejected the amendment of Mr Mohammed Ismail and also that accepted Pandit Thakurdas Bhargava's amendment limiting reservation of seats for Scheduled Castes for a period of 10 years. The amended motion was adopted and was followed by prolonged cheers.

The Constituent Assembly on Friday adopted Mr N Gopalaswami Ayyangar's motion to enable the Ruler of Kashmir to nominate, on the advice of his Prime Minister, representatives of the State to the Indian Constituent Assembly

Kashmir is entitled to send four members—one for every million of the population.

An amendment moved by Prof K. T. Shah, suggesting that the representatives should be chosen by the State Praja Sabha, elected in the winter of 1946-47, was rejected. Pandit Nehru described Prof Shah's proposition as "monstrous" and the circumstances of the election of the Praja Sabha as "fantastic and farcical".

Commending his motion to the House Mr Ayyangar said that under Constituent Assembly rules now in force no less than half of the seats allotted to the States had to be filled by elected members of the Legislatures of the States concerned and the remainder to be nominated by the Ruler himself. At present in Kashmir the Praja Sabha was not functioning and the new national Assembly had not come into existence. In the circumstances, the House had to choose a method by which it could get Kashmir representatives into the Assembly, taking the present facts into consideration. Members would concede that it was very important that Kashmir, which was now a part of India, should be represented in the Assembly.

Mr Ayyangar wished that Kashmir's representation had been brought about much earlier than now, but various things had conspired to prevent it. "We are today in a position to bring to this House four persons who could be said to be fairly representative of the population of Kashmir. The point I wish to urge is that, while two of these representatives would, in any case under the present rule, be persons who could be nominated by the Ruler, we are suggesting that all the four persons (one representative for every million of the population) should be nominated by the Ruler on the advice of his Prime Minister. The Prime Minister happens to represent the largest political party in the State. Therefore, it is only proper that the head of this party, who is also the Prime Minister, should have the privilege of advising the Ruler as to who could be the proper representatives of Kashmir in a Constituent Assembly of this kind. Under the existing circumstances that is about the best that could be done, and it would introduce a certain amount of intimate relationship between this Constituent Assembly and the Government and people of Kashmir.

STATE'S NOMENCLATURE

Representatives of Kashmir would come to the Constituent Assembly and take part in the further proceedings of the House. Most of the Articles relating to provinces and States had yet to come up for consideration, and it was only right that Kashmir should have the fight to participate in the discussions which would finalize those Articles. It was suggested in one of the amendments tabled that instead of "Kashmir" the words "Jammu and Kashmir" be substituted. "Jammu and Kashmir" no doubt described the State better. But the reason why in his motion the word "Kashmir" was used was that in all statutory enactments and rules framed so far, the State was mentioned as "Kashmir". If the name was changed now all other statutes and rules would also have to be changed. Both "Jammu and Kashmir" and "Kashmir" meant the same thing.

Pandit Lakshimikanta Maitra (West Bengal) asked whether any instructions would be issued to the Kashmir Government that representatives of Ladakh and Jammu should be among the four representatives and that all the four should not be from the Kashmir Valley.

Mr Ayyangar replied: "Kashmir in this House means the whole of Jammu and Kashmir, the sovereignty over the whole of which still remains with the Government of the State. We look upon the State as a whole. We do not recognize anything that may have happened as a result of the military operations which have been suspended. We want to bring into the Assembly persons who will represent the State as a whole and the Prime Minister, as the person who represents the Government as also the largest political party, is in our opinion, the best person to make recommendations to the Ruler, who will nominate them on such recommendations

AMENDMENT BY PROF. SHAH

Prof K. T. Shah moved an amendment seeking to change the name "Kashmir" in the motion to "Jammu and Kashmir" and wanting the seats allocated to the State in the Assembly to be filled only pending the holding of a plebiscite by the U.N and without prejudice to its results. He also asked in his amendment that the seats be filled by the Praja Sabha of the State.

Prof Shah asked why the State should not be properly described. It was not a mere verbal change he was seeking to make. Description of the State as "Kashmir" was an error which had crept into all documents and should not be allowed to be perpetuated. Until 1933, though the State was under one Ruler, the administration of Jammu and Kashmir was different.

When dealing with the plebiscite Prof Shah said the accession of the State was not complete. A point of order was raised by Dr Pattabhi Sitaramayya whether it could be discussed as accession of the State was complete and unconditional. Dr Pattabhi was supported by Pandit Nehru, Mr Balkrishna Sarma and others. Dr Rajendra Prasad upheld the objection and said the motion was concerned with representation of the State in the Assembly and Prof Shah's point was irrelevant. The portion of Prof Shah's amendment referring to the plebiscite was ruled out of order.

About the method of filling the seats Prof Shah said that half the seats allocated to other States were filled by elected representatives of the States and half only by nomination. He asked why a departure should be made in the case of Kashmir alone. In view of the extraordinary situation in that State, he wanted all four members from Kashmir to be elected. It was not proper to leave the choice of representatives to the judgment of one man.

When Prof Shah said that India had spent crores of rupees in Kashmir and that many Indian lives had been lost there, Pandit Nehru raised an objection that the remarks were irrelevant. The president, Dr Rajendra Prasad, asked Prof. Shah to confine himself to the subject of his amendment.

Mr H. V. Kamath (C.P.) said the step that the House was taking in providing for representatives of Kashmir State to sit in the Constituent Assembly could not be overestimated. In view of the explanation given by Mr Gopalaswami Ayyangar that the name "Kashmir" stood for the whole State, there was no justification for Prof Shah's amendment. There were newspaper reports that the Maharaja of Kashmir had gone on a short holiday. He hoped the amendment of Mr Gopalaswami Ayyangar would be implemented before the Ruler left the State.

Maulana Hasrat Mohani (U.P.) said there was no need to send Kashmir representatives to the Constituent Assembly at this stage. Referring to an earlier interruption by Pandit Nehru, he added: "Pandit Nehru got angry and said that Kashmir had acceded to India and, therefore, had every right to send its representatives here. I am doubtful whether he was absolutely right in saying so, because not once or twice, but many times he has said that the accession depends on the plebiscite. Now he has made up his mind, he has created difficulty and his move is that this plebiscite will never take place. Therefore he says that the accession is complete and there is no doubt about that."

Even admitting that accession was complete, the question of nominating representatives to the Constituent Assembly did not arise until the status of the Kashmir Government and the status of the Maharaja were decided.

K. T. SHAH'S PROPOSAL OPPOSED

The Prime Minister, Pandit Nehru, intervening in the debate, said that he had great admiration for the erudition and learning of Prof Shah, but he had followed with some surprise not only what Prof Shah said today but what he had said and done in regard to Kashmir for a number of years. Speaking not as the Prime Minister but as a Kashmiri and as an Indian who had been connected with the fight for freedom in Kashmir, Pandit Nehru said: "It has amazed me to hear Prof Shah propose that the so-called Praja Sabha of Kashmir should send representatives to this House. If Prof Shah knows anything about Kashmir, he should know that there is nothing more bogus than this Praja Sabha. He ought to know that the circumstances under which the last elections were held were fantastic and farcical. He ought to know that it was boycotted by all decent people in Kashmir. It was held during the winter when all the roads were impassable, when the passes could not be crossed, when, in fact, it was not possible for voters to move about. But apart from that when the National Conference of Kashmir, in spite of all difficulties, including the difficulty of Sheikh Abdullah and other leaders being in prison, decided to contest the elections, many of their candidates were arrested and it was made quite clear that practically speaking, they would just not be allowed to stand. So they decided to contest the elections with the result that the whole national movement of Kashmir boycotted them, just as the national movement in India in 1920 boycotted the elections. And it was an amazingly successful boycott and the percentage of voting was almost negligible.

"The type of people who went in were the type who had opposed the freedom movement throughout, who had done every injury possible to the idea of freedom of Kashmir till then. And subsequently when Kashmir became much freer than it ever was and got this new status, some of them sought refuge in Pakistan. This bogus body is really not a body at all. It is a disembodied spirit. It is not there and has not met for the last two or three years. Many of its members are just not traceable. Prof Shah ought to know that it is a monstrous proposition to suggest that this Praja Sabha should send members to this House."

Pandit Nehru agreed that the method recommended in the motion was not 100% correct, but what better method was there, he asked.

If he had heard Maulana Hasrat Mohani correctly, said Pandit Nehru, he would agree with the Maulana that it would have been better and more graceful for them to have had representatives of Kashmir in the Assembly much earlier. But the fact that that was not done was no reason to continue the error in future.

Pandit Nehru suggested that in order to avoid confusion in people's mind about the words "Kashmir State," the words "otherwise known as the State of Jammu and Kashmir" might be added in the motion.

MR AYYANGAR'S REPLY

Mr Gopalaswami Ayyangar, replying to the debate, said that the accession of Kashmir was perfectly correct. "I have a copy of that document before me. The accession is complete. No doubt we have offered to have a plebiscite taken when the conditions are created for the holding of a proper fair and impartial plebiscite. But that plebiscite is merely for the purpose of giving the people of the State the opportunity for expressing their will. The expression of their will should be only in the direction of whether they would ratify the accession that has already taken place, not ratify in the sense that that act of ratification is necessary for the completion of the accession. But if the plebiscite produces a verdict which is against the continuance of accession to India of the Kashmir State then what we are committed to is simply that we shall not stand in the way of Kashmir separating itself from India

"Under the provisions of the Indian people to know definitely what items had the people of Kashmir" being given effect to. "So the statement that the accession is at present complete, is a perfectly correct description of the existing state of things. We are not bringing representatives of the State to this House for the purpose of placing their seal on the act of accession. We are giving them an opportunity for the exercise of the rights they have obtained by the fact that accession has already taken place."

NO DELAY

Pointing out that this was the first meeting of the Constituent Assembly in its constitution making capacity since operations had been suspended by the cease-fire, Mr Ayyangar said: "I do not think that we can be convicted of delay in bringing this proposition forward at this meeting".

Mr Ayyangar accepted Pandit Nehru's suggestion that the words "otherwise known as the State of Jammu and Kashmir" be inserted within brackets after the words "the State of Kashmir" and moved an amendment to that effect.

Referring to Dr Kamath's suggestion to substitute the expression "premier" for "prime minister", Mr Ayyangar said that in the Kashmir constitution the expression "prime minister" was used and it had been respected.

Prof Shah's amendment was rejected.

The House adopted Mr Ayyangar's motion and his amendment adding the words "otherwise known as the State of Jammu and Kashmir" after "the State of Kashmir".

Resuming consideration of the Articles of the Draft Constitution regarding federal judicature, the House passed a number of Articles without discussion. The Article relating to the salaries and allowances of judges was held over. The subsequent Articles 105, 106 and 107, on the appointment of an acting Chief Justice, the appointment of ad hoc judges and the attendance of retired judges at sittings of the Supreme Court, were adopted with minor verbal amendments.

SUPREME COURT'S LOCATION

There was some discussion on the seat of the Supreme Court when the House took up Article 108. The Article reads: "The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President from time to time appoint."

Mr Kamath moved an amendment suggesting that "the Supreme Court shall sit at such place or places as the Chief Justice may with the approval of the President from time to time appoint". He pointed out that the capital of India had not yet been decided upon finally and there was no reason why the House should specify in the Constitution that the Supreme Court should sit in Delhi.

Dr Ambedkar moved an amendment substituting two new Articles in the place of the original Article. They read: "The Supreme Court shall be a court of record and shall have all the power of such a court, including the power to punish for contempt of itself."

"The Supreme Court shall sit in Delhi or at such other place or places as the Chief Justice of India may with the approval of the President from time to time appoint."

Mr Jaspatrai Kapur moved an amendment stating that the Supreme Court may sit in Delhi or at any other place. He said that there should be provision for the location of a circuit court at Delhi in case the Supreme Court was located at other places.

Dr Ambedkar explained that the first Article defined the status of the Supreme Court as a court of record. Since there was no "common law" in India, the powers of the Supreme Court were also defined. As regards the location, he said, the Supreme Court must have a definite place where it should sit and it was necessary to state it in the statute itself. It was not yet definitely decided whether the capital should continue to be in Delhi. Supposing the capital of India was changed, then they had to amend the Constitution to allow the Supreme Court to move. That was why the words "at such other place or places" were introduced.

The House held over consideration of six Articles from 109 to 114, concerning the jurisdiction of the Supreme Court, because many of the provisions referred to reservations in regard to the States. Dr Ambedkar said that the position of the States mentioned in Part III of the Schedule of the Constitution was being considered in order to bring these States on the same level as the States mentioned in Part I (Provinces). If that happened, he said, it was unnecessary to introduce reservation regarding Indian States. The House agreed to the suggestion and four Articles, 115 to 118, were adopted. They related to the conferment on the Supreme Court of powers to issue certain writs, ancillary powers of the Supreme Court, enforcement of decrees and orders of the Supreme Court, and the law declared by the Supreme Court to be binding on all courts.

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Therefore, if Sir Mohammed interpreted Maulana Azad's silence as neutrality or dissent, he was much mistaken. Maulana Azad had stood up against his own community when he felt he was right. Sardar Patel was sure that if ever it had occurred to Maulana Azad that India was a country of two nations, after the division he would not have remained here. But there were people who worked for separation, who claimed all through their lives that there were two nations and yet claimed to represent here the remaining nation.

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"You have acknowledged with gratefulness the concessions shown to you. I am grateful to you, because in this country we want an atmosphere of peace and harmony, not of suspicion and distrust.

He felt pour that today they were almost unanimous in their desire to remove "past blots in our constitution" (loud cheers).

The motion and the amendments were then put to the vote. The House rejected the amendments of Mr Mohammed Ismail and Mr Lari, but accepted Pandit Thakurdas Bhargava's amendment limiting reservation of seats for Scheduled Castes for a period of 10 years. The amended motion was adopted amidst loud and prolonged cheers.—A.P.I.

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State man 28.5

FOUR SEATS FOR KASHMIR IN CONSTITUENT ASSEMBLY

NOMINATION BY RULER

MR. AYYANGAR'S MOTION PASSED

SHAH'S AMENDMENT DEFEATED

FROM OUR SPECIAL REPRESENTATIVE

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MR Gopalaswami Ayyangar's motion, which was adopted with only one member, Maulana Hasrat Mohani, dissenting, provided that all four seats allotted to the State might be filled by representatives nominated by the Ruler of the State on the advice of his Prime Minister.

The method of filling all the seats by nomination is a departure from that applied to other acceding States where at least half the seats were filled by representatives elected by legislatures. The procedure was, in the words of Pandit Nehru, though not ideal, fair because the selection was to be made on the advice of the "most representative" party in the State. .. ..

Determined opposition to the motion came from Prof K. T. Shah, whose main demand was election of the State's representatives by the Praja Sabha. He also attempted to restrict, by an amendment, the status of such representatives, linking it with the result of the proposed plebiscite.

Both points were strongly resented by the Prime Minister. He characterised the Sabha as "bogus" because the 1946 election, the last held in the State, was boycotted by all popular parties, including the National Conference. The boycott, he said, was "amazingly" successful as a very small percentage of the people participated in the election.

Mr Shah's second point brought forth a categorical and emphatic statement from Pandit Nehru that the accession of the State to India had been unconditional and complete, though it might be altered as a result of the proposed plebiscite.

Mr Ayyangar, elaborating Pandit Nehru's argument, said that the plebiscite would be held to give the people of the State an opportunity to express their will as to ratification of the accession, though ratification was not necessary for completion of the accession. "We shall not stand in the way of Kashmir, as in the cases of other acceding States, separating itself

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Maulana Hasrat Mohani's contention was that there was no point in bringing in the State's representatives at this late stage. He wished the status of the State's Ruler and his Government to be determined before they were vested with authority to send representatives.

Mr Ayyangar regretted the delay which, he maintained, had been unavoidable because of the fluid conditions in the State. It was not, however, too late as most of the articles of the draft Constitution relating to provinces and States had yet to be taken up by the Constituent Assembly.

Mr Shah's amendment was lost and the original motion carried.

THE LEADER

SUNDAY, MAY 29, 1949.

According to me the economic constitution of India and for the matter of that the world should be such that no one under it should suffer from want of food and clothing.—MAHATMA GANDHI.

END OF AN EPOCH

The Constituent Assembly's decision to abolish reserved seats in the legislature for minorities, except for scheduled castes, is, as Pt. Jawaharlal Nehru said in his speech, 'a historic turn in our destiny'. The decision brings to mind a fateful event that occurred at Simla about 43 years ago. On Oct. 1, 1906, the Aga Khan and a number of other Muslim stooges of the bureaucracy presented Lord Minto with an address stating their grievances and their demands. The main demand was the establishment of communal electorates and reservation of seats in legislatures and local bodies in proportion to 'the political importance' of the Muslim community. The presentation of the address was a command performance. Consequently the demand was accepted at once. Commenting on the Viceroy's announcement, Lady Minto wrote in her diary, 'This has 'been a very eventful day: as 'some one said to me, an epoch 'in Indian history.' It was an epoch in the sense that it marked the beginning of Hindu-Muslim discord, which led to disastrous results. The Constituent Assembly's decision to abolish reserved seats marks the end of the epoch referred to by Lady Minto. That is why the decision constitutes 'a historic turn 'in our destiny.'

All barriers which separate one community from another in the political field should go. Reserved seats are a remnant of the communal policy the British Government pursued in India in order to disrupt the nation. They are injurious not only to the interests of the nation but to the interests of the minorities also. The minorities are isolated from the rest of the nation. As Pt. Nehru pointed out, 'In a democracy it is the 'will of the majority that will 'prevail. The result is that the 'minority may get one anna in 'the rupee of protection at the 'cost of the remaining 15 annas. 'That is not good enough.' It is a matter for gratification that the minority communities, including a section of Muslims, who had been persuaded to believe by the British ruling classes that communal safeguards were vital to their interests, have revised their attitude. For instance, Mr. Tajammul Husain expressed the opinion that there should be no reservation of seats for any community. He said that the constitution of no country with a democratic system of government provided for reserved seats and that in the British House of Commons even the seats reserved for universities had been abolished. This statement is to be welcomed. It augurs well for future relations among the various communities.

There was, however, one disquieting feature of the debate which deserves attention. That was the speech of the spokesman of the Muslim League, Mr. Mahomed Ismail of Madras. He asserted that the Muslims as a community were not in favour of the abolition of reserved seats. Mr. Ismail spoke with vehemence. He said, 'I would im-'plore the house to retain sepa-'rate electorates which alone 'will give us the right sort of 'representation in the legisla-'ture. The Muslim League is 'still the representative organi-'sation of the Muslim commun-'ity and we have more than once 'within a year expressed definite-'ly the view that we are not in 'favour of giving up reserva-'tions but we will urge for the 'retention of separate electo-'rates'. We do not believe that 'the Muslim League is still the 'representative organisation of 'the Muslim community.' Even during the British regime a considerable section of Muslims were vehemently opposed to the principles and ideals of the League. But Mr. Ismail's speech shows that the League is still intent on doing mischief. Sardar Patel ascribed the demand for separate electorates to the anxiety of the members of the Indian Muslim League to obtain a share of the funds the League which amount to about Rs. 70 lakhs and which are in the custody of the Pakistan Muslim League. We think that the leaders of the Indian Muslim League are influenced by other considerations also. We think that the leaders of the Indian Muslim League like those of the Pakistan Muslim League still believe in the two-nation theory. The League is, therefore, a menace to the security and peace of India. The Government should keep a watch on its activities and should not hesitate to deal sternly with it if it resumes its old political activities.

HINDUSTHAN STANDARD

POPULAR SUNDAY PAPER WITH ALL-INDIA CIRCULATION

CALCUTTA, THE 29TH MAY, 1949.

THE SUPREME COURT

PROVISION for a Supreme Court is an essential part of any federal type of Constitution. One of the chief functions of such a court is to settle disputes regarding jurisdiction and other constitutional matters that may naturally arise between the Federal Government and other units of the Federation. The Draft Constitution of India includes a chapter on "Federal Judicature" which is far more elaborate in its provisions than the corresponding parts of many other Federal Constitutions, for example, the Constitution of the United States.

Although the Constituent Assembly has left over for the time being the clauses relating to the jurisdiction of the Supreme Court, the debate on other clauses which have been already passed by it has been marked with liveliness. The fundamental principle round which the entire debate revolved was the independence of the judiciary of other organs of the State. The debate revealed clearly how greatly the principle of separation of powers is valued as a basis of democracy, and also how impossible it is in practice not to compromise the principle to maintain the essentially organic structure of a State.

As regards the constitution of the Supreme Court, the relevant clause as finally passed by the Assembly provides that the judges of the Supreme Court will be appointed by the President and, except in his own case, the Chief Justice will be consulted by the President before the appointment of these judges is made by him. Thus in spite of the theory of the separation of powers, the executive head of the State has been empowered to appoint the judges. This could hardly be avoided. This is also the practice in the United Kingdom and the U. S. A. In the United Kingdom it is the Crown which appoints the judges, which means in practice that the Cabinet appoints them. In the U. S. A., it is the President who appoints the judges of the Supreme Court. One member of the Assembly, by an amendment, sought to make these appointments subject to confirmation by two-third members of the two Houses of the Parliament. This procedure, the member thought, would be a greater guarantee of judicial independence than the simple provision for appointment by the President. It may be said in favour of this suggestion that something like this procedure obtains in the U. S. A. The President of the United States cannot appoint the judges of the Supreme Court except with the advice and consent of the Senate. There is, however, much force in the argument put forward by Dr. Ambedkar that such procedure would lead to the dependence of the Judiciary on the Legislature and may lead to its exposure to political pressures. The Assembly did not accept the amendment in question.

It may be argued that if the judges of the Supreme Court in India are appointed by the President, and so ultimately by the Cabinet in power, will it not make the Judiciary a creature of the Executive? Will it not throw overboard the much-talked-of principle of judicial independence? It may be replied that absolute independence of any organ of the State of others is inconceivable. The independence of the Judiciary in the United Kingdom where the judges are appointed by the Cabinet is maintained to some extent by the fact that though the Cabinet appoints them, it is powerless to remove them. A judge in the U. K. can be removed only if both Houses of Parliament present an address to His Majesty for his removal. A similar provision has been adopted in our Constitution. A judge of the Supreme Court can be removed from office only by an order of the President passed after an address presented to him by each House of Parliament supported by a majority of the total membership of that House and by a two-thirds majority of members present and voting.

The Article relating to the salaries and allowances of judges has been held over. But an interesting debate took place over the clause relating to the salaries, allowances and pensions payable to the officers and servants of the Supreme Court. The original clause in the Draft Constitution gave the Chief Justice the power to fix these salaries and allowances. It provided, however, that the Chief Justice would consult the President in fixing them. This clause has been amended, and under this amendment the Chief Justice will fix the emoluments in question subject to the approval of the President. Thus whereas under the original clause, the Chief Justice was not bound to accept the President's advice in the matter, under the amended clause the President can veto the Chief Justice if he does not agree with the latter. It was argued by Sri Ananthasayanam Aiyangar that the amendment was not consistent with the idea that the Judiciary should be separated from the Executive. For said he, it would make the Chief Justice dependent on the President in the matter of appointment of the officers of the Supreme Court, which means that it is the Cabinet or perhaps the Secretaries who would ultimately decide the matter. In spite of the force of this argument, the amendment in question seems to have been wise. For, as Dr. Ambedkar pointed out, there should be uniformity in the scale of salaries of the servants of the State. If the fixation of the salaries of the Supreme Court officers were left entirely in the hands of the Chief Justice, it is quite conceivable that he might fix a scale entirely different from that of other civil servants. This would create much difficulty. So, in spite of the theory, a compromise of the principle of judicial independence was unavoidable in this case. The organic life of the State can never be brought in accord with the strict theoretical principle of the separation of powers. The balance between that principle and the requirements of facts has been well struck in this case.

The Supreme Court will be truly supreme. This means that the law declared by it will be binding on all courts within the territory of India and that it will itself not be bound by its own declarations. It will be able to change its decisions if such change is found necessary in future. Here again the compromise involved is obvious. For the very fact that the Supreme Court will interpret the Constitution authoritatively means that though it is the Judiciary it will perform to some limited extent the law-making function of the Legislature.

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India Express 30/5.

NOMINATION OF GOVERNORS FAVOURED

C.A. TO REVERSE DECISION

ELECTION ON PERSONAL BASIS 'HARMFUL'

NEW DELHI, May 29.

THE Constituent Assembly is expected on May 31 to decide in favour of nomination of Provincial Governors by the President, thus reversing its earlier decision that Governors should be elected by the primary voters, as in the United States.

The provisions relating to the appointment of Governors became the subject of acute controversy when the original proposal for election of Governors, suggested by the joint committee of the Provincial Model Constitution Committee and the Central Union Constitution Committee, was subsequently changed by it in favour of nomination. This subsequent decision has been adopted by the Drafting Committee and was endorsed by the Congress Party in the Constituent Assembly which met yesterday.

A peculiar feature relating to the drawing up of the Constitution it is pointed out, is the rapid change in the context of conditions in India from the time the Constitution began to be drafted.

The Constituent Assembly met on Dec. 9, 1946, when the establishment of Pakistan was not even a remote idea, as it appeared to have been dismissed by the Cabinet Mission's statement of May 16 1946, round which all negotiations centred.

The abstention of the All-India Muslim League from the Interim Government formed in August, 1946, made it appear that the process of framing the Constitution would be smooth, but when the League joined the Ministry as well as the Constituent Assembly in November 1946, the general approach of the Assembly at every step was to make the working of the Constitution unobjectionable in undivided India.

To cite an example, the Advisory Committee on Minorities early in 1947 thought in terms of reservation of seats for certain groups, but with the partition of the country and the attainment of independence the outlook changed slowly culminating in the revolutionary decision" recently to do away with reservation for Muslims and Christians.

Likewise, in the earlier days, the Governor was intended to be elected by the primary voters, so as to put his election above all communal considerations, although it was well known at that time that the American model would not suit India.

CHANGED CONDITIONS

But, in the changed conditions, it is realised that the Governor will only be a constitutional Governor and that the prevailing practice under which members of all communities, Hindus, Muslims and Christians, are nominated as Governors has given satisfaction to all.

Men of all shades of opinion, it is recalled, have been brought in, not merely orthodox Congressmen. Mr. M. S. Aney's appointment was the first surprise. Then there was the appointment of Sir Akbar Hydari and later of Mr. Asaf Ali and Sir Maharaj Singh.

The wide range of choice and the appropriate selection of the individual are, it is stated aspects that confirm the wisdom of deviating from the American practice and reverting to the British.

Just as the King appoints Governors on the advice of the Prime Minister, in Republican India the President will appoint Provincial Governors on the advice of the Prime Minister and, of course, in consultation with the Premiers of the Provinces concerned.

PRESIDENTIAL PEDESTAL

The President's place will not be a mere sinecure but one which works from a high moral pedestal and what may not be legally enforceable becomes morally effective with an intelligent and highly experienced President, whose high standard of culture and dignity would doubtless be sustained in the coming years at the present level. The method of continuing to nominate Governors, it is argued, must be appropriate to the constitutional headship of the Governor on the one hand and to the conditions in the country on the other.

To sink every province into the vortex of an election with millions of primary voters but with no possible issue other than personal, would be highly detrimental to the country's progress, for in the absence of clear-cut issues based on policies or principles, the election of Governors, it is held, is bound to be degraded to vulgar levels of personal equation. The decision to avoid election of Governors will save the country from such a perilous plight.

DECISION ON DETAILS TODAY

When the Governor is to be nominated instead of being elected, the question of his resignation being tendered to the Speaker, as provided for in the original articles will no longer arise, and questions relating to the removal of the Governor or his impeachment will have to be considered anew. Whether it is sufficient to provide that the Governor will hold office during the pleasure of the President, subject, however, to his term being normally five years, is a point which has not yet been settled. The question of removal for proved misconduct or violation of the Constitution or the law may also have to be considered. When the primary basis for the appointment of Governors is changed, it is maintained the superstructure must undergo corresponding variations.

It is understood that the Congress Party will decide these questions to-morrow.—A.P.I.

THE LEADER

MONDAY, MAY 30, 1949.

I hold drink to be more damnable than thieving and perhaps even prostitution. Is it not often the parent of both?—MAHATMA GANDHI.

PROMULGATION OF ORDINANCES

ONE of the important subjects the Constituent Assembly discussed during the last week was the power of the President to promulgate ordinances. Article 102 of the draft constitution provides that 'if at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.' As was to have been expected the article evoked a lively debate. The mention of the expression ordinance brings to mind the abuse of the Governor-General's ordinance-making powers by the bureaucracy under British rule. Mahatma Gandhi who never indulged in irresponsible talk, who weighed every word he uttered carefully, said in 1931, 'There can be no justification for the ordinances promulgated in the United Provinces or the North-West Frontier Province. We cannot tolerate any of them.' But it is a mistake to criticise article 102 or other provisions of the draft constitution merely because the executive abused its powers during the bureaucratic regime.

There was some ill-informed criticism of article 102 in the Constituent Assembly. Mr. Kamath said, 'Is it not repugnant to the idea of freedom and democracy that the executive should be given the power to issue ordinances?' There is no country in the world more freedom-loving and more democratic than Britain. But even in Britain the Crown derives from statute very wide powers for the maintenance of public order in cases of emergency. The King may issue a proclamation of emergency, if satisfied that there is risk of action by any persons calculated to deprive the community of the essentials of life, by interfering with the supply of food, water, fuel or light or with the means of locomotion. We are not enamoured of ordinances. But we must accept them in the same way as the British have accepted the emergency powers of the King because they are a necessary evil. Mr. Kamath said, 'We are going one step further than the most atrocious British regime.' There is no comparison between the position of the President under the proposed constitution and the powers of the Governor-General during the atrocious British regime. As Dr. Ambedkar pointed out in his well-argued speech in the Constituent Assembly, section 43 of the Government of India Act conferred upon the Governor-General powers to promulgate an ordinance which he felt necessary to discharge his functions requiring the exercise of his discretion and individual judgment. The section ignored the existence of the legislature. The Governor-General could do as he liked. He was 'a parallel legislative authority.' The President does not possess any independent power of legislation. He is not entitled even under article 102 to promulgate an ordinance when the legislature is in session. He can promulgate an ordinance only when the legislature is in recess.

But while we recognise the need for conferring upon the executive sufficient powers to meet an emergency, we feel that the article in question needs to be amended. In Britain even in cases of emergency full control is assured to Parliament to which a proclamation must forthwith be communicated. Parliament must be summoned to meet specially, if not in session. A proclamation has effect for one month only. Article 102 of the draft constitution does not contain such a provision. Pt. Hirdaynath Kunzru pointed out that under the provisions of the draft constitution which were similar to those of the Government of India Act of 1935 an ordinance could remain in force for 7½ months. The Government of India should follow the practice of the Government of Great Britain and restrict the period of operation of an ordinance to 30 days as suggested by Pt. Kunzru. Also it will be advisable to make, as suggested by Dr. Rajendra Prasad, a provision in the constitution to the effect that the President shall accept the advice of the Council of Ministers in respect of the promulgation of ordinances.

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Statesman 30-5-49

PROPOSAL TO NOMINATE GOVERNORS

AMENDMENT MOVED IN ASSEMBLY

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Monday.—The Constituent Assembly today agreed to an Article of the Draft Constitution providing for a Governor for each State and adjourned before the discussion on the method of choosing such a Governor had concluded. Under the Constitution the present provinces will be known as States.

The 100-minute debate on the method of selection of a Governor of a State centred round an amendment suggesting appointment by the President by warrant under his hand and seal, a proposal in line with the decision of the Congress Party in the Constituent Assembly taken at a meeting on Friday.

Of eight members who spoke, two—Mr Rohini Kumar Chaudhury and Sardar Hukum Singh—opposed the amendment reflecting divided party opinion on this matter.

The amendment is a complete reversal of what had been adopted by the Assembly in 1947 when it agreed to election by adult franchise. It also varies considerably from the Drafting Committee's recommendation.

The Drafting Committee suggested election by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State, or alternatively, appointment by the President by warrant under his hand and seal from a panel of four candidates elected by

(Agency report on page 7)

the members of the State Assembly.

Those who supported the party decision and the amendment seemed to have been aware of the criticism they were likely to face for changing the earlier decision. They anticipated criticism and attempted to refute it.

Mr Brajeshwar Prasad, moving his amendment, said that in the interest of India's unity Governors should be nominated by the Government. This procedure would enable the Government of India to maintain intact its authority over the States.

DIRECT ELECTION OPPOSED

In Mr H. V. Kamath's opinion, if the objective of the constitution was to have a cabinet form of Government in the States, a system of direct election for Governors was improper and impracticable. It would create in in a State two conflicting authorities, the Governor and the Premier.

Sardar Hukum Singh said the Drafting Committee's alternative proposal steered a middle course between direct election and nomination. To consult the electorate too frequently was cumbersome while direct nomination by the President might lead to favouritism.

Sir Alladi Krishnaswami Ayyar saw no reason why there should be doubts about the proper use of the President's power of nomination. When appointing the Governor of a State, the President would consult the Government of the State concerned. Such a convention existed in Canada and would develop in India. Selection from a panel of persons elected by a Legislative Assembly was fraught with undesirable political implications.

Mr B. G. Kher, Premier of Bombay, who had strongly supported the proposal for election by adult franchise, today opposed it on the ground that conditions had changed since they had taken the previous decision. Experience had shown, he said, that the system of nomination had functioned well. According to him it was quite logical for the President,

(Continued on back page column 3)

NOMINATION OF GOVERNORS

(Continued from page 1 column 1)

who would be responsible for government of the States, to nominate the Governors.

Mr Rohini Kumar Chaudhury considered that it would be impossible for the President, being himself a nominee of the party in power, to take a detached view in the nomination.

Pandit H. N. Kunzru saw in the Bombay Premier's suggestion that the President should appoint Governors an intention to control State Governments from the Centre. He sought clarification of this point as it might be a source of considerable conflict between the Centre and the States.

Swarajya Mail & Chronicle
31-5-

NOMINATED GOVERNORS

Few will agree with the reasons given to justify the change in the Draft Constitution in favour of having Governors nominated by the President and not elected as originally proposed. There has been no change in the context of the conditions in the country which makes this change in the Draft Constitution necessary. As a matter of fact, after the proposal to arm the Governors with wider powers than those originally contemplated, it is all the more necessary that the Governors should have electoral sanction in the exercise of their emergency powers. Governors nominated by the President can never have that sanction. Any exercise of arbitrary powers by them may be resented by the people. As for the argument that nomination gives a wider choice inasmuch as certain people like the former rulers of Indian States, who will have little chance to be elected, can be nominated under the new arrangement, it is wholly untenable. An arrangement under which people not acceptable to public opinion can be imposed on them as Governors cannot be called democratic. It has to be recognised that people who cannot face the electorate cannot be made executive heads under any democratic system without doing injury to that system.

The other argument advanced to justify the change in the Draft Constitution, the plea that "in the absence of clear-cut issues based on policies or principles, the election of Governors is bound to be degraded to vulgar levels of personal equation" is no less untenable. Why should there by absence of clear-cut issues based on policies? The very fact that different parties would be backing different candidates will ensure that they will stand for different programmes. If the parties or the candidates, however, prefer to fight on a personal equation basis, it cannot be helped. After all there is no guarantee even in the case of the elections to the legislatures that they will be fought on clear-cut issues. The personal equation danger can be averted by seeing to it that all parties evolve clear-cut programmes and that the issues are squarely put before the people. To seek to avert it by dispensing with the election altogether is to accept a cure which is worse than the disease. To try to by-pass the electorate is to cut at the very root of democracy.

The anxiety in certain quarters to see that all the strings of control remain in the hands of the party dominating the Centre even in case power in one or more provinces passes to the hands of other parties is easily understandable. But such devices as nominated Governors, far from helping to create unity, will only intensify suspicions between the provinces and the Centre in case of use of emergency powers. On the other hand, the other popular provincial leaders can have nothing to say against the use of such powers by a man who has got an electoral mandate as they themselves. The change in favour of nominated Governors carries implications which will alarm all those who think that distrust of the people is never conducive to the health of a democracy.

NOMINATION OF GOVERNORS IN INDIA

PROPOSAL DISCUSSED IN ASSEMBLY

The Constituent Assembly on Monday made good progress in dealing with the Articles on the appointment, duties and powers of the Auditor-General, but was bogged down when Article 131, relating to the appointment of Governors of States, came up for consideration.

In Article 131, as it stands in the Draft Constitution, there is alternative provision for election of the Governor by the people of the province concerned or, appointment by the President of the Union from a panel of four candidates elected by the provincial Legislature.

Mr Brajeshwar Prasad (Bihar) moved an amendment for substitution of the entire Article by a new one providing for the appointment of the Governor by the President. The principle of this amendment, it is understood, has been approved by the Drafting Committee and endorsed by the Congress Assembly Party.

Among the supporters of Mr B. Prasad's amendment were the Premier of Bombay, Mr B. G. Kher, and Mr Alladi Krishnaswami Ayyar, member of the Drafting Committee.

AUDITOR-GENERAL

The Assembly then discussed the chapter on "Auditor-General of India," containing four Articles relating to his appointment and duties and powers, including the power to give directions as to accounts and issue an audit report.

Mr T. T. Krishnamachari moved an amendment recommending that the nomenclature of the Auditor-General should also include "Comptroller," that the administrative expenses of the office of the Auditor-General, including all salaries payable to him and members of his staff, should be charged upon the revenues of India, and that the Comptroller should take an oath of office. The House accepted those amendments.

Mr R. K. Sidhwa, while expressing satisfaction at the provisions that had been made by the constitution designed to make the Auditor-General as independent of the Executive or the Legislature as possible, opposed the amendment that the administrative expenses of the Auditor-General should be charged to the revenues of India. He contended that this would debar Parliament from exercising its right of voting.

Mr B. Das said that the Auditor-General should be placed in the same status as the Chief Justice of the Supreme Court, quite independent of the Executive.

DR AMBEDKAR'S VIEW

Dr Ambedkar admitted that he was not happy about the position. He said that personally he was of the opinion that this dignitary was probably the most important officer mentioned in the constitution. He was going to see that the expenses voted by Parliament were not exceeded or varied from what had been laid down by Parliament in what was called the Appropriation Act. If this functionary was to carry out his duties, which, he felt, were far more important than the duties even of the Judiciary, he should certainly be as independent as the Judiciary.

By comparing the Articles about the Supreme Court and the Articles relating to the Auditor-General he could not help saying that the Auditor-General had not even been given the same independent status which the House had provided for the Judiciary. He ought to have greater independence than the Judiciary.

The Supreme Court was vested with powers to appoint officers and servants of the Supreme Court. The Auditor-General was not to have any such power. The absence of such power meant that the staff of the Auditor-General would be appointed by the Executive. Being appointed by the Executive, the staff would be subjected to disciplinary action by the Executive.

He had not the slightest doubt in his mind that if an officer did not possess the power of disciplinary action over his immediate subordinates, his administration would be thoroughly demoralized. From that point of view it would have been proper in the interest of the people that such power should have been given to the Auditor-General. For the moment, he felt that nothing more than expressing these sentiments could be done.

Replying to Mr Sidhwa's criticism, Dr Ambedkar pointed out that although certain expenses might be charged to the revenues of India it did not deprive Parliament of the right to discuss those charges. They were non-votable items. The Drafting Committee did not want the Executive to interfere too much in the necessities as determined by the Auditor-General. They did not want legislators, who might have been discontented or had a fad of economy, to interfere with the administration. That was why that provision was made.

Prof K. T. Shah moved for the inclusion of a new Article stating that the Auditor-General should be appointed from among persons qualified as registered accountants or holding any other equivalent qualifications recognized as such and having not less than 10 years' practice.

AMENDMENT REJECTED

Mr T. T. Krishnamachari opposing the amendment said that although the idea was plausible it was extremely narrow. The office of the Auditor-General involved not merely the question of accounts knowledge but a comprehensive knowledge of administration. The present system of appointment was best suited to India.

The House rejected the amendment.

Pandit H. N. Kunzru moved an amendment to the Article defining the duties and powers of the Auditor-General to the effect that besides the Government of India and the Government of any State, the Auditor-General should perform duties in relation to accounts of any authority that might be created by the Government. He said that the object was to provide that Parliament should have the power to confer additional duties on the Auditor-General to audit the accounts of authorities like the Damodar Valley Corporation.

Supporting the amendment, Mr Sidhwa suggested that the Auditor-General should be given additional powers to see that the Executive did not exceed the grants made by Parliament. He cited the instance of last March when the Government of India came with a supplementary demand for over Rs 130 crores and the House had to pass it to avoid embarrassment to the Ministry.

Dr Ambedkar said he would accept Pandit Kunzru's amendment in view of the fact that such provision was necessary, particularly when the Government of India was planning to create a great many corporations to manage certain works which could not be managed departmentally.

The House adopted the articles with the amendments.

The Assembly then considered Part 6 of the Draft Constitution relating to the States of the Indian Union.

Chapter 1 of this part, which says that the expression "State" means a State as specified in Part 1 of Schedule I of the Constitution, was adopted. Part 1 of Schedule I enumerates the present nine provinces of India as States of the Union.

When Article 129 of Chapter 2, which lays down that there shall be a Governor for each State, was considered, Mr Lakshminarayan Sahu (Orissa) moved an amendment that there should be at least one Governor from each of the States. The purpose of his amendment, Mr Sahu said, was that no province should be denied the opportunity of sending a Governor. If such a provision was not made, it was possible that no person from a small province like his would get a Governorship.

Mr Brajeshwar Prasad (Bihar) opposing the Article, said there was no necessity for any Governors at all. Provincial autonomy was given by the British and should be abolished, as it lead to distrust of the Centre. Federalism meant separation of powers which doctrine had been exploded. Part 6 of the Constitution should not be hurried.

Dr Deshmukh (C.P. and Berar) wanted a strong unitary Government for India. The present constitution was a mere repetition of the Government of India Act which was framed in Britain. Experience had shown that there were many dangers ahead of the present constitution, and if they wanted to avoid them, radical changes were necessary.

UNITARY CONSTITUTION

Indians must find a way which would be ideally suited to the conditions of the country. He asked why we should not decide upon a unitary constitution which would have the co-operation of the people of the country. Once autonomous powers were taken away from the provinces, and were concentrated in the Centre, all provincial jealousies would disappear.

Mr Sidhwa said he sympathized with Mr Sahu's view that Governors should be chosen from every province and not from only one or two provinces. He, however, felt that it was not proper to put in an amendment to that effect.

Mr Rohini Kumar Chaudhuri (Assam) asked whether there was any able man in Assam or Orissa. If there was an able man in either of these provinces, he would have found a place as a Minister or Governor or Ambassador or Judge. "You cannot say," he said "that the persons who choose people for these appointments are not responsible persons or that they do not exercise sound judgment."

He agreed with Mr Sahu that the claims of each province must be considered while making these appointments.

Mr Sahu's amendment was rejected and the Article adopted.

The House also adopted Article 130, which says that the executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the constitution and the law. Nothing in this Article shall be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or prevent Parliament or the legislature of the State from conferring by law functions on any authority subordinate to the Governor.

ELECTION OF GOVERNOR

The House next discussed Article 131, which says that the Governor of a State shall be elected by direct vote of the electorate, or alternatively, shall be appointed by the President from a panel of four candidates to be elected by the Legislature.

Mr B. Prasad moved an amendment to the effect that the Governor of a State shall be nominated by the President by warrant under his hand and seal.

Mr Mohammed Tahir (Bihar) asked whether a member was competent to move an amendment which went contrary to the views and decisions the House taken earlier that Governors should be elected.

The President, Dr Rajendra Prasad, said that it was open to the House to alter its previous decision.

Mr Sahu said that under the rules of the House, an earlier decision could be reconsidered only if one-fourth of the members desired to do so.

Dr Prasad replied that he assumed that the House was in favour of reconsideration, but if Mr Sahu desired, he would take the sense of the House.

Mr Kamath, supporting Mr B. Prasad, said there were sound reasons for altering the earlier decision. The emphasis at that time was on the federal aspect of the constitution, while the emphasis today was on the union pattern. Much could be said in favour of Dr Deshmukh's proposal for a strong unitary system of Government in India at this particular juncture in the country's affairs, but on a long-range view it would not be advisable to do away with the system of provincial autonomy.

KIND OF GOVERNMENT

The crux of the matter was what type of Government India was going to have. If she was going to have a parliamentary system then the method of direct election of the Governor was appropriate; if the Governor were to be elected by direct vote, then he might consider himself to be superior to the Premier, who was merely returned from a single constituency, and this might lead to frequent friction between the Governor and the Premier.

The choice of the Governor out of a panel elected by the Legislature was also open to objection. If, for instance, the President did not choose the man whose name was first on the list, the choice might not be liked by the Minister. The system might also give rise to "jockeying" by groups for first place in the panel.

Sardar Hukum Singh held that the alternative draft Article regarding the appointment of a Governor by the President from a panel of four candidates to be elected by members of the Legislative Assembly steered a middle course between the two extremes of pure nomination and pure election. He said that the election of Governors might prove expensive and troublesome leading to a conflict between the Governor and the Premier, but it was unwise to leave so much discretion with the Executive at the Centre.

Mr Alladi Krishnaswami Ayyar, supporting Mr B. Prasad's amendment said that the Constituent Assembly had accepted the introduction of responsible government in different States and the Governor was merely the constitutional head of the province, the real executive power being vested in the Ministry responsible to the Lower House.

The House should consider, therefore, whether in these circumstances there was any point in going through the expensive and elaborate machinery of election based on universal suffrage.

Of all the suggestions, namely, the election of the Governor on the basis of universal suffrage, the election by a majority of the Lower House on the principle of proportional representation, selection of a panel by the Lower House in the State from which the choice was to be made by the President, and, finally, the appointment by the President made in consultation with his Cabinet he felt the wisest course to adopt was the last one. If the Governor was to function as the constitutional head, the expenses involved and the elaborate machinery of election was out of all proportion to the powers vested in the Governor.

He said that there was no comparison between a Governor in the USA and a Governor under the Indian Constitution. In the USA the Governor was the real Executive. The proper analogy had to be sought for in the Canadian constitution. If the principle of responsible government was the main feature of the Constitution, he had no doubt that in the normal working of the Constitution, a convention would grow by which the Government of India would consult the provincial Cabinet while appointing the Governor.

Replying to the argument that the Central Executive was being vested with too much powers, Mr Krishnaswami Ayyar said that if powers could be conferred on the Prime Minister to appoint the Commander-in-Chief of all forces, ambassadors in different parts of the world, the Chief Justice and Justices of the Supreme Court and high officers in the Cabinet, there could be no objection to the appointment of the Governor being left to the President who would necessarily act on the advice of the Prime Minister.

As regards the panel system it was fraught with dangers. In the interest of good working of the Government, and of sound relations between the provincial Government and the Centre, it was much better to adopt the Canadian model of appointment of the Governor by the President.

Supporting the amendment, Dr Deshmukh said that if the House decided that the Governor should be elected on adult suffrage, it followed that he should be clothed with real Executive authority. On the other hand, if they wanted the Governor to be a mere figurehead he should be appointed by the President. So long as the present structure of the constitution, based on the principle of responsible Government continued, the Governor must necessarily be the constitutional head without any authority to interfere in the day-to-day administration, and the possibilities of friction and clash must be avoided. He also wanted that the appointment of a Governor should be during the pleasure of the President.

CHANGED CONDITIONS

Mr B. G. Kher also supporting the amendment said that conditions in the country had changed since the Assembly took the decision on this issue in 1947. In other matters than this, the House had gone back on the decisions which at that time it thought proper. Experience had taught them that the system of appointment of the Governor worked fairly well in practice.

He thought that the election of a Governor, on the basis of adult suffrage, was not advocated by anybody in the House. Apart from the expenses it would involve, it would lead to the election of the province a person who was elected by the people of the State, but the power would, under the constitution, be vested in the Prime Minister.

It was bound to give rise to conflicts which it was desirable to avoid. The Governor represented the State and the Premier the largest party in the State and was, therefore, responsible for whatever happened in the administration. So far as the Governor was concerned, the constitution had given him very few powers but he was not a mere figurehead. A Governor could do a great deal of good if he was a good Governor and a lot of mischief if he was bad.

Pointing out the defects of the panel system, Mr Kher said that if four or five persons were put up for or aspired to a Governorship, in the course of election even in the Legislature there was bound to be some canvassing and whatever happened it would mean a lot of disgruntled people in the House. If the House wanted the leader of the House or the Prime Minister to be responsible for good government, then he must have power to appoint people whether they were colleagues in the Central Cabinet or Governors of States.

Having deliberately chosen the British model of responsible Government, and having decided to give the Governor the position of the titular head of the Executive, the only insurance for smooth government in the province was to allow the President of the country to nominate a person who enjoyed his confidence, which meant the confidence of his Cabinet, and also the Cabinet of the province. Any other method would give rise to friction.

Mr Rohini Kumar Chaudhari said the Constitution Committee had two years ago decided that Governors should be elected and asked why that decision should now be changed. In the case of nomination, the President of the Union would have to take the advice of the Prime Minister who would be the leader of a party and, therefore, the nomination, he said, would be influenced by political considerations.

MORE CHANCE OF FRICTION

Mr Chaudhari then read out the pledge taken by Governors before they assumed office. In this pledge they undertook to work for the well-being of the people, and said that a nominated Governor would not be able to work for the welfare of a province, because he would be a foreigner to that province and would not be able to understand anything about it.

Referring to the point raised by members earlier that if the Governor was elected there would be friction between him and the provincial Premier, Mr Chaudari said there was more chance of friction between a nominated Governor and the Premier of a province because the Prime Minister of the Union, on whose advice the nomination was made and the Premier of the province might not belong to the same party.

Mr Chaudhari argued that if the Governor was nominated certain sections of the people of a province would be neglected. He instanced the case of the tribal people of Assam. If the Governor was elected in Assam, he would watch the interests of the backward tribes who would also have a hand in his election.

Certain members had raised the point that the election of the Governor would be a stupendous task involving much expenditure but he felt that if the election of the Governor was held during the general elections, there would be no extra expenditure.

Pandit Kunzru said that two years ago he was one of the few unfortunate men in this House who tried to persuade it not to resort to the system of election of Governors on the basis of adult franchise. He was glad to find that opinion in the House had changed and that even Mr Kher, who had stood emphatically for election, now favoured a different procedure.

He reminded the House that the Draft Constitution, though it gave a great deal of power to the Central Legislature and the Executive, did not provide for a unitary system. It had not reduced the provinces to the level of municipalities and District Boards. The provinces would, notwithstanding the reduction made in their authority, still have the power exclusively to control certain subjects.

The responsibility of the Prime Minister for the good government of the country could not extend to the sphere that would be exclusively under the control of the provincial Parliament and Executive. This should be clearly realized lest there should be a serious conflict between the Central Government on one side and the provincial Governments on the other.

GROWTH OF DEMOCRACY

Another important consideration which should be borne in mind was that the constitution should be such as would permit the free and full growth of democracy and prevent the establishment of a dictatorship. "At the present time", he said, "it may seem to many of us that greater confidence is reposed by the country in the judgment of the Central Executive than in that of the provincial Executives. But in the first place this can be no reason for reducing the provincial legislatures and Governments to a position of utter subordination to the Central Legislature and Executive. In the second place, things may not always remain as they are now.

"It is easy to conceive of a time when the Central Government will not inspire as much confidence as at least some of the provincial Governments may. If you entrust the Central Executive or the Central Legislature to exercise control over the provinces in all important matters and let them fall in line with the policy of the Centre, there is a serious danger of the country falling under a dictatorship."

When conflicts arose between the provinces and the Centre, said Pandit Kunzru, it was probable that they would be regarded as serious by the country generally if they related to matters coming within the purview of the Centre. In that case, the Centre would, under the constitution, have adequate means of dealing with such a situation. "But", added Pandit Kunzru, "let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive".

Pandit Kunzru pointed out that under Article 175 as it stood, a Bill could be reserved for the President's consideration by the Governor, but if the Governor did not do so, the President did not come into the picture at all. In this situation it was clear that the Centre would instruct the Governor to reserve for the President's consideration certain Bills that it did not approve of.

POWERS FOR PRESIDENT

Mr T. T. Krishnamachari: "Article 175 has yet to be passed the House and it is more than likely that it will be reshaped so as to fit in with the amendment that is now before the House if the amendment is passed".

Pandit Kunzru: "That is exactly what I wanted. It will be better, instead of using the Governor as the instrument of the President, to give the President the power of disallowing provincial Bills within a certain period. In that case, the responsibility both in form and in reality will be that of the Central Executive. Otherwise there is likely to be friction between the Governor and his Cabinet."

Pandit Kunzru said he did not know whether it was proposed also to modify Article 188 (Power of Governor in Grave Emergencies) in view of the change which was sought to be made as regards the method of appointing Governors. When the House resolved two years ago in favour of election of Governors, the main argument was that in that case, the responsibility both in form and in reality will be that of the Central Executive. Otherwise there is likely to be friction between the Governor and his Cabinet."

"Let such control as has to be exercised in emergencies under the constitution be exercised by the President of the Republic directly and not through the Governor so that the Governor and his Cabinet may not seem to be in conflict with one another to the public at large".

The debate had not concluded when the House adjourned.—API.

Hindustan Times 31-5-49

GOVERNORS FOR STATES OF THE UNION

Indian Express 31-5

CONSTITUENT ASSEMBLY ADOPTS FIVE MORE ARTICLES

(By Our Special Correspondent)

NEW DELHI, Monday.—Disposing of the three articles concerning the Auditor-General without much discussion, the Constituent Assembly took up the chapter relating to States or units of the Indian Union.

Two articles—one stating that "there shall be a Governor for each State" and the other defining the executive power of States—were quickly adopted after which a major debate took place on the question whether Governors should be appointed by the President or elected by adult suffrage. A third alternative was that the State legislature should elect a panel of four out of which one should be appointed by the President.

General feeling in the House was definitely in favour of leaving the President free to make the appointments in consultation with his Cabinet. Before Mr Alladi Krishnaswami Ayyar marshalled his arguments in favour of this proposal, two speakers vehemently advocated a unitary system of Government for the country.

Mr Brajeshwar Prasad, who once suggested the creation of a dictatorship in India, said that no Governors were required and there should be no separation of powers between the Centre and the States.

Dr Punjabrao Deshmukh was equally forthright. There was, according to him, no need of provincial autonomy under the present conditions.

Mr Alladi Krishnaswami Ayyar said that having agreed to responsible government in the States they could not have an elected Governor, who would be only a constitutional head. They need not have an expensive election. In fact, nowhere in the world when there was responsible government was the Governor elected. Election of a panel by the State legislature was equally undesirable. In an emergency the Governor would have to take over the administration and he should be a person who was unconnected with party rivalries.

The proposal was supported by several members. Speeches in opposition had hardly any arguments to demolish the case built up by Mr Krishnaswami Ayyar. Their objection that the Assembly having already agreed to have elected Governors could not now change its decision without the support of one-fourth of the members present was not even taken seriously. The President declared that he had assumed that one-fourth of the members were ready to support the new proposal.

Second Thoughts

ABOUT the mode of appointing Governors as well as representation for minorities, the Constituent Assembly has developed second thoughts. It is surmised that the draft will be shortly revised and just as reservation of seats for Muslims was given up the proposal for election of Governors will be dropped. One really good reason for departing from the draft is that the minorities have secured full justice. Christians and Parsis have been appointed as Governors without reference to party connections but only with reference to public service. Liberals are as welcome as former Congress Ministers. Since it is Hoped to make full use of the princely order for staffing public posts it is easy to see that the hurly-burly of an election should be avoided.

Another factor influencing second thoughts in relation to the election of Governors is the fact that India's new constitution follows the British model closely and public salaried officers in Britain are certainly not elective. The disturbing effects of a popular election need not be described to justify the C.A.'s going back on the original proposal. In the British Dominions today elected Governors are unknown and the provincial cabinet has full control over the subjects allotted. We are probably right in expecting the C.A. to follow Canadian practice in the matter. Ordinarily Provincial Governments will be informed in advance about the appointment of Governors and the selection will not be that of the Central Government alone. In declining to consider any change to election as an improvement on present practice we may point out that an elected Governor may turn out to be a rival of both the Cabinet and Assembly. In the U.S.A. strong Governors like Dewey of New York and Warren of California are front-rank politicians opposed to the party in power at Washington. They overshadow the State Segate and are actually running the executive. We shall have nothing of that kind over here for the Chosen Committee of the elected legislature as Ministers in office will wield power. To divide it would be only to create difficulties for the Ministers.

There is not even any proved need to show in safeguards through the instrument of instructions. We should not let the debates of 1934-35 colour present opinion concerning the status and functions of Governors. The scrapping of the idea of election will render the Governor of the future a non-party figure able to hold a dignified position in relation to the Ministry. That electorates under adult suffrage would be unwieldy is one other argument against election. The forthcoming debate will probably lead to "popular" claims against the exposition of second thoughts but we might well suggest that Administration on the South African model would prove more suitable than imagined. The choice of Governors by the Central Government will render it unnecessary to think of impeachment or other penalties. The Congress Party is right in thinking that circumstances have wholly altered the case for election. It is only just to say a popular Ministry is more likely to get on with a nominal head of the administration, if he has not come into office by election. In opposing any deviation from present practice many will take into account the circumstance that politics in future will turn on measures rather than men.

C. A. BOGGED OVER APPOINTMENT OF GOVERNORS

NOMINATION OR ELECTION? LIVELY DISCUSSION

CLAUSES ON AUDITOR-GENERAL'S DUTIES VOTED

The Constituent Assembly yesterday made good progress in dealing with the articles on the appointment, duties and powers of the Auditor-General but was bogged down when Article 131, relating to the appointment of Governors of States, came up for consideration.

In Article 131, as it stands in the draft constitution, there is alternative provision for election of the Governor by the people of the province concerned or appointment by the President of the Union from a panel of four candidates elected by the provincial legislature.

Mr Brajeshwar Prasad (Bihar) moved an amendment for substitution of the entire article by a new one providing for appointment of the Governor by the President. The principle of this amendment it is understood, has been approved by the Drafting Committee and endorsed by the Congress Assembly Party.

On a point of order raised by Mr Mohammed Tahir (Bihar), the President, Dr Rajendra Prasad, ruled that it was open to the House to alter its previous decision in favour of election of Governors.

Among the supporters of Mr Brajeshwar Prasad's amendment were the Premier of Bombay, Mr B. G. Kher, and Mr. Alladi Krishnaswami Ayyar, member of the Drafting Committee.

Mr Kher said that the only way to ensure smooth government in a province was to allow the Union President to nominate as Governor a person who enjoyed the confidence which meant the confidence of the Union Cabinet and that of the province concerned.

Mr Krishnaswami Ayyar said that there was danger of a Governor returned by the will of the people at large coming into clash with the Premier elected by the majority party.

Mr Rohini Kumar Chaudhari (Assam), opposing Mr Prasad's amendment, said that political considerations would influence nomination.

The debate on this article is expected to conclude today.

When the House resumed debate on the draft constitution, Mr T. T. Krishnamachari moved an amendment recommending that the nomenclature of the Auditor-General should also include comptroller, that the administrative expenses of the office of the Auditor-General, including all salaries payable to him and members of his staff, should be charged upon the revenues of India, and that the comptroller should take an oath of office. The House accepted those amendments.

Mr R. K. Sidhwa, while expressing satisfaction at the provisions that had been made by the constitution de-

pression State means a State as specified in Part I of the First Schedule of the Constitution, was adopted. Part One of the First Schedule enumerates the present nine provinces of India as States of the Union.

When Article 129 of Chapter II, which lays down that there shall be a Governor for each State, was taken up for consideration, Mr Lakshminarayan Sahu (Orissa) moved an amendment that there should be at least one Governor from each of the States. The purpose of his amendment, Mr Sahu said, was that no province should be denied the opportunity of sending a Governor. If such a provision was not made, it was possible that no person from a small province like his would get a governorship.

Mr Brajeshwar Prasad (Bihar), opposing the article, said there was no necessity for any Governors at all. Provincial autonomy was given by the Britishers and should be abolished, as it led to distrust of the Centre. Federalism meant separation of powers which doctrine had been exploded. Part 6 of the Constitution should not be hurried through, he said.

Dr Panjabrao Deshmukh (C.P. and Berar) wanted a strong unitary Government for India. The present constitution was a mere repetition of the Government of India Act which was framed in Britain. Experience had shown that there were many dangers ahead of the present Constitution and if they wanted to avoid them, radical changes were necessary. Indians must find a way which would be ideally suited to the conditions of the country. He asked why we should not decide upon a unitary constitution which would have the co-operation of the people of the country. Once autonomous powers were taken away from the provinces, and were concentrated in the Centre, all provincial jealousies would disappear.

Mr Sidhwa said that he sympathized with Mr Sahu's view that Governors should be chosen from every province and not from only one or two provinces. He, however, felt that it was not proper to put in an amendment to this effect.

Mr Rohini Kumar Chaudhuri (Assam) asked whether there was any able man in Assam or Orissa. If there was an able man in either of these provinces, he would have found a place as a Minister or Governor or Ambassador or Judge. "You cannot say," said Mr Chaudhuri, "that the persons who choose people for these appointments are not responsible persons or that they do not exercise sound judgment." However, he agreed with Mr Sahu that the claims of each province must be considered while making these appointments.

Mr Sahu's amendment was rejected and the article was adopted.

The House also adopted Article 130, which says that the executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the constitution and the law. Nothing in this article shall be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or prevent Parliament or the legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Dr Ambedkar pointed out that, although certain expenses might the Supreme Court, quite independent of the Executive. Refuting the argument of Mr Sidhwa, Mr Das pointed out that, although the expenses in connection with the Governor-General were charged to the revenues, Parliament was not debarred from discussing the extravagance of the Governor-General.

Dr Ambedkar admitted that he was not happy about the position. He said that, personally, he was of the opinion that this dignitary was probably the most important officer mentioned in the constitution. He was going to see that the expenses voted by Parliament were not exceeded or varied from what had been laid down by Parliament in what was called the Appropriation Act.

If this functionary was to carry out his duties, his duties, he felt, were far more important than the duties even of the judiciary—he could have been certainly as independent as the judiciary. By comparing the articles about the Supreme Court and the articles relating to the Auditor-General he could not help saying that the Auditor-General had not even been given the same independent status which the House had provided for the judiciary. He ought to have greater independence than the judiciary. The Supreme Court was vested with powers of appointment of officers and servants of the Supreme Court. The Auditor-General was not to have any such power. The absence of such power meant that the staff of the Auditor-General would be appointed by the Executive. Being appointed by the Executive, the staff would be subjected to disciplinary action by the Executive.

He had not the slightest doubt in his mind that, if an officer did not possess the power of disciplinary action over his immediate subordinates, his administration would be thoroughly demolished. From the point of view, it would have been proper in the interest of the people that such a power would have been given to the Auditor-General. For the moment, he felt that nothing more than expressing these sentiments could be done.

Replying to the criticism of Mr Sidhwa, Dr Ambedkar pointed out that, although certain expenses might

mination and pure election. He said that election of Governors might prove expensive and troublesome leading to a conflict between the Governor and the Premier but it was unwise to leave much discretion with the Executive at the Centre.

Mr Alladi Krishnaswami Ayyar, supporting the amendment of Mr Brajeshwar Prasad, said that it should be borne in mind that the Constituent Assembly had accepted the introduction of responsible government in different States and the Governor was merely the constitutional head of the province—the real executive power being vested in the Ministry responsible to the Lower House. The House should consider, therefore, whether, in these circumstances, there was any point in going through the expensive and elaborate machinery of election based on universal suffrage.

Of all the suggestions,—election of the Governor on the basis of universal suffrage, election by a majority of the Lower House on the principle of proportional representation, selection of a panel by the Lower House in the State from which the choice was to be made by the President and, finally, the appointment by the President made in consultation with his Cabinet—he felt the wisest course to adopt was the last one. If the Governor was to function as the constitutional head the expenses involved and the elaborate machinery of election was out of all proportion to the powers vested in the office.

There was also a danger of the Governor, who had been returned by voters at large, getting into a clash with the Premier. The election itself would have to be fought on party tickets. Even after or during the election, the party would rally round the leader and there was a conflict whether the leader was the Governor or the Premier. There was a danger of such clashes between the Ministry and the Governor, whereas the basis of the constitutional structure that they were erecting depended on harmony between the legislature and executive and the executive and the formal head, the Governor.

The Canadian Model

He said that there was no comparison between the State Governor in the U.S.A. and the Governor under the Indian Constitution. In the U.S.A. the Governor was the real executive. The proper analogy had to be sought for in the Canadian Constitution. The Assembly adopted the principle of responsible government as either obtained in the Dominions or in other parts of the Commonwealth. Nowhere did the system of election of the Governor of the State exist when the principle of responsible government was the main feature of the constitution. He felt that, even in the normal working of the constitution a convention would grow by which the Government of India would consult the provincial Cabinet while appointing the Governor.

Replying to the argument that the Central Executive was being invested with too much powers, Mr Krishnaswami Ayyar said that, if power could be conferred on the Prime Minister to appoint the Commander-in-Chief of all forces, Ambassadors in different parts of the world, Chief Justice and justices of the Supreme Court and high officers in the Cabinet, there could be no objection to the appointment of the Governor being left to the President who would act necessarily on the advice of the Prime

place of Governor, there was bound to be some kind of canvassing, and, whatever happened, it would mean a lot of disgruntled people in the House. If the House wanted the leader of House or the Prime Minister of India responsible for good government, then he must have the power to appoint people whether they were colleagues in the Central Cabinet or Governors of the States.

The principle of appointing these people by elections was very much open to doubt. Having deliberately chosen the British model of responsible government and deciding to give the Governor the position of the titular head of the executive, the only insurance for smooth government in the province was to allow the President to nominate a person who enjoyed his confidence which certainly meant the confidence of his Government, and also the Cabinet of the province. Any other method would give rise to considerable friction.

Mr Rohini Kumar Chaudhari (Assam) said the Constitution Committee had never even once decided that Governors should be elected and asked why that decision should now be changed. In the case of nomination, the President of the Union would have to take the advice of the Prime Minister of India who would be the leader of a party and, therefore, the nomination, he said, would be influenced by political considerations.

Mr Chaudhari then read out the pledge taken by Governors before they assumed Office. In the pledge they undertook to work for the well-being of the people and Mr Chaudhari said that a nominated Governor would not be able to work for the welfare of a province, because he might be a foreigner to that province and might not be able to understand anything about it.

Referring to the point raised by members earlier that if the Governor was elected there would be friction between him and the provincial Premier concerned, Mr Chaudhari said there was more chance of friction between a nominated Governor and the Premier of a province because the Prime Minister of the Union, on whose advice the nomination was made, and the Premier of the province might not belong to the same party.

Mr Chaudhari said that if the Governor was nominated certain sections of the people of a province would be neglected. He instanced the case of the tribal people of Assam. If the Governor was elected in Assam, he would see that steps were taken for backward tribes who would also have a hand in his election.

Certain members, Mr Chaudhari said, had raised the point that election of the Governor would be a stupendous task involving much expenditure but he would say that if the election of the Governor was held during the general elections, there would be no extra expenditure.

Pandit Hirday Nath Kunzru said that two years ago he was "one of the few unfortunate men in this House who tried to persuade it not to resort to the system of election of Governors on the basis of adult franchise." He was glad to find, however, that opinion in the House had changed and that even Mr Kher, who had stood emphatically for election, now favoured a different procedure.

Pandit Kunzru reminded the House that the Draft Constitution, though it gave a great deal of power to the Central legislature and executive, did not provide for a unitary system. "I had not reduced the provinces to

what I wanted. It will be better, in-

The debate on this article is expected to conclude today.

When the House resumed debate on the draft constitution, Mr T. T. Krishnamachari moved an amendment recommending that the nomenclature of the Auditor-General should also include comptroller, that the administrative expenses of the office of the Auditor-General, including all salaries payable to him and members of his staff, should be charged upon the revenues of India, and that the comptroller should take an oath of office. The House accepted those amendments.

Mr R. K. Sidhwa, while expressing satisfaction at the provisions that had been made by the constitution designed to make the Auditor-General as independent of the Executive or the legislature as possible, opposed the amendment that the administrative expenses of the Auditor-General should be charged to the revenues of India. He contended that this would debar Parliament from exercising its right of voting.

Mr B. Das said that the Auditor-General should be placed in the same status as the Chief Justice of India.

Dr Ambedkar pointed out that, although certain expenses might be charged to the revenues of India, it did not deprive Parliament of the right to discuss those charges. They were non-votable items. The Drafting Committee did not want the Executive to interfere too much in the necessities as determined by the Auditor-General. They did not want legislators who might have been discontented or had a fad for economy to interfere with the administration. That was why that provision was made.

Shah's Amendment Lost

Prof. K. T. Shah moved for the inclusion of a new article stating that the Auditor-General should be appointed from among persons qualified as Registered Accountants or holding other equivalent recognized qualifications and having not less than ten years' practice.

Mr T. T. Krishnamachari, opposing the amendment, said that although the idea behind it was plausible, it was extremely narrow. The office of Auditor-General involved not merely the question of accountancy knowledge but a comprehensive knowledge of administration. The present system of appointment was best suited to India, he added.

The House rejected the amendment.

Extension Of Duties

Pandit H. N. Kunzru moved an amendment to the article defining the duties and powers of the Auditor-General to the effect that, besides the Government of India and the Government of any State, the Auditor-General should perform duties in relation to the accounts of any authority that might be created by the Government. He said that the object was to provide that Parliament should have the power to confer additional duties on the Auditor-General to audit accounts of authorities like the Damodar Valley Corporation.

Mr Sidhwa, supporting the amendment, suggested that the Auditor-General should be given additional powers to see that the Executive did not exceed the grants made by Parliament. He cited the instance in March last when the Government of India came with a supplementary demand for over Rs. 130 crores and the House had to pass it with a view to avoiding embarrassment to the Ministry.

Dr Ambedkar said that he would accept the amendment of Pandit Kunzru in view of the fact that such a provision was necessary, particularly when the Government of India was planning to create a great many corporations to manage certain works which could not be managed departmentally.

The House adopted the articles with the amendments.

PROVISION FOR GOVERNORS IN "STATES OF THE UNION"

The Assembly then proceeded to consideration of Part 6 of the Draft Constitution relating to States of the Union.

Chapter I, which says that the ex-

be appointed by the Executive. Being appointed by the Executive, the staff would be subjected to disciplinary action by the Executive.

He had not the slightest doubt in his mind that, if an officer did not possess the power of disciplinary action over his immediate subordinates, his administration would be thoroughly demoralised. From the point of view, it would have been proper in the interest of the people that such a power would have been given to the Auditor-General. For the moment, he felt that nothing more than expressing these sentiments could be done.

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sound judgment." However, he agreed with Mr Sahu that the claims of each province must be considered while making these appointments.

Mr Sahu's amendment was rejected and the article was adopted.

The House also adopted Article 130, which says that the executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the constitution and the law. Nothing in this article shall be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or prevent Parliament or the legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Choice Of Governor

The House next took up Article 131, which says that the Governor of a State shall be elected by direct vote of the electorate or alternatively, shall be appointed by the President from a panel of four candidates to be elected by the legislature of the State.

Mr Brajeshwar Prasad (Bihar) moved an amendment to the effect that a Governor shall be nominated by the President by warrant under his hand and seal.

Mr Mohd. Tahir (Bihar) asked whether a member was competent to move an amendment contrary to the earlier unanimous decision of the House that Governors should be elected.

The President said that it was open to the House to alter its previous decision.

Mr Lakshminarayan Sahu (Orissa) said that under the rules of the House, an earlier decision could be reconsidered only if one-fourth of the members desired to do so.

Dr Rajendra Prasad replied that he assumed that the House was in favour of reconsideration but, if Mr Sahu desired, he would take the sense of the House.

What System of Govt.?

Mr H. V. Kamath, supporting Mr Brajeshwar Prasad, said that there were sound reasons for altering the earlier decision taken in the July-August session in 1947. The emphasis at that time was on the federal aspect of the constitution, while today the emphasis was on the Union pattern. Much could be said in favour of Dr Deshmukh's proposal for a strong, unitary system of government at this particular juncture in the country's affairs but, on a long-range view, it would not be advisable to do away with the system of provincial autonomy.

The crux of the matter was what type of government India was going to have. If she was going to have a parliamentary system of government, then the method of direct election of the Governor was inappropriate. If the Governor were to be elected by direct vote, then he might consider himself to be superior to the Premier, who was merely returned from a single constituency; and this might lead to frequent friction between the Governor and the Premier. The choice of the Governor out of a panel elected by the legislature was also open to objection. If, for instance, the President did not choose the man whose name was first in the list, the choice might not be liked by the Minister. This system might also give rise to "jockeying" by groups for first place in the panel.

Sardar Hukum Singh held that the alternative draft article regarding appointment of the Governor by the President from a panel of four candidates to be elected by members of the Legislative Assembly of the State steered a middle course between the two extremes of pure no-

ment was the main feature of the constitution. He had no doubt that in the normal working of the constitution a convention would grow by which the Government of India would consult the provincial Cabinet while appointing the Governor.

Replying to the argument that the Central Executive was being invested with too much powers, Mr Krishnaswami Ayyar said that, if powers could be conferred on the Prime Minister to appoint the Commander-in-Chief of the forces, the Ambassadors of different parts of the world, Chief Justice and justices of the Supreme Court and the Governors of the Cabinet, there could be no objection to the appointment of the Governor being left to the President who would act necessarily on the advice of the Prime Minister.

As regards the panel system of election, he said that it was fraught with grave dangers. On the whole, in the interests of harmony, good working of the Government, and of sound relationship between the provincial Governments and the Centre, it was much better to adopt the Canadian model of appointment of the Governor by the President.

Dr Punjabrao Deshmukh, supporting the amendment, said that, if the House decided that the Governor should be elected on adult suffrage, it followed logically that he should be clothed with real executive authority. On the other hand, if they wanted the Governor to be a mere figurehead, the position the constitution had assigned to him, he should be appointed by the President. So long as the present structure of the constitution, based on the principle of responsible government, continued, the Governor must be necessarily the constitutional head without any authority to interfere in the day-to-day administration. The possibilities of friction and clash must be avoided. He was in favour of the tenure of the office of Governor should be during the pleasure of the President.

Mr B. G. Kher supporting the amendment said that conditions in the country had changed since the Assembly took the decision on this issue in 1947. In other matters, the House had gone back on the decisions which at that time it thought proper. Experience had taught them that the system of appointment of Governors had worked fairly well in practice. He thought that the election of Governors on the basis of adult suffrage was not advocated by anybody in the House.

Apart from expenses it would involve, it would put at the head of the province a person who was elected by the people of the State, but the whole power of the State would, under the constitution, be vested in the Prime Minister. It was bound to give rise to certain conflicts which it was desirable to avoid in the interest of sound administration. The Governor represented the State and the Premier was elected by virtue of being the leader of the largest party in the House and was responsible for whatever happened in the administration. So far as the Governor was concerned, the constitution had given him very few powers but he was not a mere figurehead. A Governor could do a great deal of good if he was a good Governor and he could do a lot of mischief if he was a bad Governor. He was the symbol of the State, but if the Governor was active and good, he could by means of getting into touch with the opponents of the party in power reconcile them on a good number of measures and generally make the administration run smoothly.

Pointing out the defects of the panel system of nomination, Mr Kher said that if four or five persons were put up for or aspire to the

tion of the Governor was held during the general elections, there would be no extra expenditure.

Pandit Hriday Nath Kunzru said that two years ago he was "one of the few unfortunate men in this House who tried to persuade it not to resort to the system of election of Governors on the basis of adult franchise." He was glad to find, however, that opinion in the House had changed and that even Mr Kher, who had stood emphatically for election, now favoured a different procedure.

Pandit Kunzru reminded the House that the Drafting Committee thought it gave a great deal of power to the Central legislature and executive, did not provide for a unitary system, "had not reduced the provinces to the level of municipalities and district boards. The provinces would notwithstanding the reduction made in their authority, still have the power exclusively to control certain subjects. The responsibility of the Prime Minister of India for the good government of the country could not extend to the sphere that would be exclusively under the control of the provincial legislature and executive. This should be clearly realized lest there should be serious conflict between the Central Government on one side and the provincial Governments on the other.

Another very important consideration which should be borne in mind was that the constitution should be such as would permit the free and full growth of democracy and prevent the establishment of a dictatorship. "At the present time," Pandit Kunzru said, "it may seem to many of us that greater responsibility is imposed by the country in the judgment of the Central executive than in that of the provincial executive. But, in the first place, this can be no reason for reducing the provincial legislatures and Governments to a position of utter subordination to the Central legislature and executive. In the second place, things may not always remain as they are now.

"It is easy to conceive of a time when the Central Government will not inspire as much confidence as at least some of the provincial Governments and in such a contingency the Central executive or the Central legislature to exercise control over the provincial field of important matters and let them fall in line with the policy of the Centre, there is a serious danger of the country falling under a dictatorship."

When conflicts arose between the provinces and the Centre, Pandit Kunzru said it was very probable that they would be regarded as serious by the country generally if they related to matters coming within the purview of the Centre. In that case, the Centre would, under the constitution, have adequate means of dealing with such a situation. "But," added Pandit Kunzru, "let us divest ourselves completely of the notion that the Governor *is* to be used in any way in order to carry out the wishes of the Central executive."

Effect Of Article 175

Pandit Kunzru pointed out that under Article 175 as it stood, a Bill could be reserved for the President's consideration by the Governor, but if the Governor did not do so, the President did not come into the picture at all. In this situation, it was clear that the Centre would instruct the Governor to reserve for the President's consideration certain Bills that he did not approve of.

Mr T. T. Krishnamachari: Article 175 has yet to be passed by the House and it is more than likely that it will be reshaped so as to fit in with the amendment that is now before the House, if the amendment is passed.

Pandit Kunzru: That is exactly what I wanted. It will be better, instead of using the Governor as the instrument of the President, to give the President the power of disallowing provincial Bills within a certain period. In that case, the responsibility both in form and in reality will be that of the Central executive. Otherwise there is likely to be friction between the Governor and his Cabinet.

Pandit Kunzru said that he did not know whether it was proposed also to modify Article 188 (power of Governor in grave emergencies) in view of the change which was sought to be made as regards the method of appointing Governors. When the House resolved two years ago in favour of election of Governors, the main argument was that the situation was such a character as to require that the Governor should have the power of acting decisively in grave emergencies. It was sought that responsible ministries, depending upon popular votes, might not in a crisis be able to act with the strength required by the situation.

The opinion of the House on that subject had changed and he hoped that this article would also be amended so that it might be consistent with the establishment of responsible ministries in the provinces and might not lead to bitter conflicts between the Governor and his Cabinet. "If control has to be exercised in emergencies let it be exercised by the President of the Republic directly and not through the Governor so that the Governor and his Cabinet may not seem to be in conflict with one another," added Pandit Kunzru.

The debate had not concluded when the House adjourned till today.

—A.P.I.

THE STATESMAN

DELHI, MAY 31, 1949

INDIA'S FEDERAL JUDICIARY

BRIEF as is the period left for enacting what is, in bulk at least, the major part of India's constitution, few will regret time recently spent in discussion of the status of Supreme Court judges. A memorandum embodying the unanimous opinion of India's Federal and High Court Chief Justices, reported to have been recently submitted to the Constituent Assembly, rightly drew attention to "the paramount importance of securing the fearless functioning of an independent, incorruptible and efficient Judiciary". Recent debates in that body—as all too frequent conflict between Judiciary and Executive outside—reinforce this view, for upon the Federal Judiciary will devolve the responsibility of asserting and precisely interpreting by case law, the citizen's fundamental rights. As Dr Ambedkar pointed out in the discussion of Article 102, these rights limit legislation alike by representative bodies and by Presidential ordinance. Their maintenance, as well as the other functions of a supreme appellate court, must therefore rest in hands uninfluenced by fear or favour, but in the highest sense responsible to the nation and body politic.

The implications of this requirement were diversely interpreted. On the one hand was the extreme lawyers' view, also maintained in the judges' memorandum, that all appointments other than that of the Chief Justice of India should require the pre-eminent personage's prior concurrence. The present procedure, the judges felt, does not always ensure appointments "purely on merit, without political, communal and party consideration". On the other hand the Drafting Committee had recommended deletion of the original reference to consultation with the Chief Justice; since the President would appoint on the advice of his Ministers, thought Mr K. C. Sharma, such consultation was superfluous. Yet a third school of thought wanted an approach to the U.S. system: either a direct parallel in which the Council of States would exercise the ratificatory rôle of the U.S. Senate, or a more extreme form in which judicial appointments would need a two-thirds majority of both Houses.

The compromise eventually adopted, by which the original form of the Article was maintained and "consultation with", but not "concurrence of", the Chief Justice was required seems wise. No doubt, without such explicit provision, the Ministry would in general consult the highest judicial officer of the State before making appointments; but, since India's is to be a written Constitution, there are advantages in having as much as possible in black and white. On the other hand, while the Chief Justice's wishes would in general be likely to command respect, circumstances can be envisaged in which the Ministry—responsible, after all, to the nation—would be right in overruling him. Potential tyranny of lawyers has of late received less attention than that of irresponsible executives; but, as President Roosevelt's struggle with the U.S. Supreme Court in the 'thirties suggested, it is perhaps as possible for the law to be—or seem to be—out of touch with realities as for the Ministry to show too scant regard for the law.

Examples from the same country show the vices, as well as the virtues, of control by the Legislature. On the one hand President Roosevelt was accused of "packing" the Supreme Court—and from one limited view the accusation was certainly true. On the other, in some at least of his appointments, the President showed himself wiser than his critics; in Mr Hugo Black, subject of particularly loud outcry, he discovered a jurist of subsequent international reputation while few would dispute the claims to eminence of Mr Felix Frankfurter. Approval of the Legislature, perhaps necessary where the Executive is irremovable for a term of years, seems superfluous under the system envisaged in India, where a simple motion of no confidence might at any time force resignation or dissolution; so far from constituting a safeguard against excess, it might conceivably increase the danger of political appointments, tyranny of the majority, and disregard of merit. The Legislature is, however, appropriately responsible for recommending removal of judges for proven misconduct or incapacity, equally appropriately, the Drafting Committee's recommendation was accepted, requiring for this purpose not merely a two-thirds vote but an absolute majority of the total membership of both Houses.

Whatever the precise arrangements under which judicial appointments are made, there is always some possibility of conflict arising unless Judiciary, Executive and Legislature all appreciate the nature of, and limitations upon, their own proper functions. Such recognition and restraint will be particularly important during independent India's formative years, when her basic laws are being laid down and applied in novel circumstances. That, however, raises issues of extreme complexity which time and experience alone can solve.

The Hindustan Times

TUESDAY, MAY 31, 1949.

PERVERSE COUNSEL

The All-India Trade Union Congress at its Bombay session passed a resolution condemning the Indian National Trade Union Congress as the fifth column of the capitalists and the Congress Government, created to disrupt the working class from within and confuse the mind of the middle classes and prevent strikes. In the last resort, the influence of a trade union organization can be measured only by the number of workers who are its members and if, by that test, the Indian National Trade Union Congress has been steadily growing in strength and the All-India Trade Union Congress losing its influence, the latter has no one to thank but itself. Even the most cursory consideration of the resolutions passed by the conference is enough to show that the A.-I.T.U.C. is not interested in genuine trade unionism and the welfare of the worker but only in using the worker for other, doubtful, ends. We may dismiss the resolution on the Atlantic Pact describing it as "a war pact for the domination of the world by the Anglo-American imperialists," as an echo of its master's voice, but when the Congress proceeds to indict "the capitalist Governments" of India, Pakistan and Ceylon for linking themselves up with this war pact through the Commonwealth pact, headed by British Imperialism, it not only indulges in perverse propaganda but accuses the Indian Prime Minister, who has denied such insinuations, of telling an untruth. When India as a Dominion has the right to keep clear of Britain's foreign commitments, it will be too much for anybody to claim that she will lose this right when she becomes a Republic, simply because she will continue to be a member of the Commonwealth.

Most significant of all is the resolution passed by the Bombay session to form a central "fighting", organization of Indian railwaymen in opposition to the Socialist-dominated All-India Railwaymen's Federation which is charged with "betraying" the workers by refusing to declare a strike. A special conference of Railway Unions affiliated to the A.-I.T.U.C. is to be convened in July to implement this decision. Mr Joglekar, Vice-President of the A.-I.T.U.C., moved an amendment suggesting that the A.-I.T.U.C., instead of forming a separate organization, should make efforts to gain control of the Railwaymen's Federation, but it was lost. The whole controversy about the threatened railway strike has been well thrashed out in the Press and the All-India Railwaymen's Federation enhanced its reputation by refusing to be a tool in the hands of those anxious to disrupt the country's communications and disorganize the country's economy at a time of acute scarcity of food and other necessaries of life. If parts of the country have been saved from the horrors of famine, it is because the Railways, in spite of their present limited capacity, have kept food grains moving. The economic position is still a difficult one and a railway strike which will make movement of food and other essential goods impossible will be nothing short of a calamity. Unless better counsels prevail, the authorities will do well not to be caught unprepared by any course of action which the "fighting" organization may ultimately decide to take.

One curious thing about the whole session was the incapacity of the organizers to understand and appreciate the real nature of the economic problem which confronts the country. The over-all food deficit in the country, which is now being made good by imports, can be met only by increased production. The adverse balance of payments position which the country is facing can only be made good by increased exports of raw materials and finished goods and by restriction of imports, to the extent to which this is possible, so far as non-essential goods are concerned. This again means a vast increase in agricultural and industrial production. At such a time, for any organized body of labour to set about deliberately working for strikes, especially in the country's communications, is nothing short of criminal betrayal of the interests of the masses, including the interests of organized labour. The Bombay session of A.-I.T.U.C. is a lesson in irresponsibility. It is to be hoped that labour will not be influenced by such perverse counsel.

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NOMINATION OF GOVERNORS IN INDIA

PROPOSAL DISCUSSED IN ASSEMBLY

The Constituent Assembly on Monday made good progress in dealing with the Articles on the appointment, duties and powers of the Auditor-General, but was bogged down when Article 131 relating to the appointment of Governors of States, came up for consideration.

In Article 131, as it stands in the Draft Constitution, there is alternative provision for election of the Governor by the people of the province concerned or appointment by the President of the Union from a panel of four candidates elected by the provincial Legislature.

Mr Brajeshwar Prasad (Bihar) moved an amendment for substitution of the entire Article by a new one providing for the appointment of the Governor by the President. The principle of this amendment, it is understood, has been approved by the Drafting Committee and endorsed by the Congress Assembly Party.

Among the supporters of Mr B. Prasad's amendment were the Premier of Bombay, Mr B. G. Kher, and Mr Alladi Krishnaswami Ayyar, member of the Drafting Committee.

AUDITOR-GENERAL

The Assembly then discussed the chapter on "Auditor-General of India," containing four Articles relating to his appointement and duties and powers, including the power to give directions as to accounts and issue an audit report.

Mr T. T. Krishnamachari moved an amendment recommending that the nomenclature of the Auditor-General should also include "Comptroller," that the administrative expenses of the office of the Auditor-General, including all salaries payable to him and members of his staff, should be charged upon the revenues of India, and that the Comptroller should take an oath of office. The House accepted those amendments.

Mr R. K. Sidhwa, while expressing satisfaction at the provisions that had been made by the constitution designed to make the Auditor-General as independent of the Executive or the Legislature as possible, opposed the amendment that the administrative expenses of the Auditor-General should be charged to the revenue of India. He contended that this would debar Parliament from exercising its right of voting.

Mr B. Das said that the Auditor-General should be placed in the same status as the Chief Justice of the Supreme Court, quite independent of the Executive.

Vagance of the Governor-General.

DR AMBEDKAR'S VIEW

Dr Ambedkar admitted that he was not happy about the position. He said that personally he was of the opinion that this dignitary was probably the most important officer mentioned in the constitution. He was going to see that the expenses voted by Parliament were not exceeded or varied from what had been laid down by Parliament in what was called the Appropriation Act. If this functionary was to carry out his duties, which, he felt, were far more important than the duties even of the Judiciary, he should certainly be as independent as the Judiciary.

By comparing the Articles about the Supreme Court and the Articles relating to the Auditor-General he could not help saying that the Auditor-General had not even been given the same independent status which the House had provided for the Judiciary. He ought to have greater independence than the Judiciary.

The Supreme Court was vested with powers to appoint officers and servants of the Supreme Court. The Auditor-General was not to have any such power. The absence of such power meant that the staff of the Auditor-General would be appointed by the Executive. Being appointed by the Executive, the staff would be subjected to disciplinary action by the Executive.

He had not the slightest doubt in his mind that if an officer did not possess the power of disciplinary action over his immediate subordinates, his administration would be thoroughly demoralized. From that point of view it would have been proper in the interest of the people that such power should have been given to the Auditor-General. For the moment, he felt that nothing more than expressing these sentiments could be done.

REPLY TO CRITICISM

Replying to Mr Sidhwa's criticism, Dr Ambedkar pointed out that although certain expenses might be charged to the revenues of India it did not deprive Parliament of the right to discuss those charges. They were non-votable items. The Drafting Committee did not want the Executive to interfere too much in the necessities as determined by the Auditor-General. They did not want legislators, who might have been discontented or had a fad of economy, to interfere with the administration. That was why that provision was made.

Prof K. T. Shah moved for the inclusion of a new Article stating that the Auditor-General should be appointed from among persons qualified as registered accountants or holding any other equivalent qualifications recognized as such and having not less than 10 years' practice.

Mr T. T. Krishnamachari opposing the amendment said that although the idea was plausible it was extremely narrow. The office of the Auditor-General involved not merely the question of accounts knowledge but a comprehensive knowledge of administration. The present system of appointment was best suited to India.

The House rejected the amendment.

Pandit H. N. Kunzru moved an amendment to the Article defining the duties and powers of the Auditor-General to the effect that besides the Government of India and the Government of any State, the Auditor-General should perform duties in relation to accounts of any authority that might be created by the Government. He said that the object was to provide that Parliament should have the power to confer additional duties on the Auditor-General to audit the accounts of authorities like the Damodar Valley Corporation.

Supporting the amendment, Mr Sidhwa suggested that the Auditor-General should be given additional powers to see that the Executive did not exceed the grants made by Parliament. He cited the instance of 1st March when the Government of India came with a supplementary demand for over Rs 130 crores and the House had to pass it to avoid embarrassment to the Ministry.

Dr Ambedkar said that he would accept Pandit Kunzru's amendment in view of the fact that such provision was necessary, particularly when the Government of India was planning to create a great many corporations to manage certain works which could not be managed departmentally.

The House adopted the articles with the amendments.

The Assembly then considered Part 6 of the Draft Constitution relating to the States of the Indian Union.

Chapter 1 of this part, which says that the expression "State" means a State as specified in Part 1 of Schedule 1 of the Constitution, was adopted. Part 1 of Schedule 1 enumerates the present nine provinces of India as States of the Union.

When Article 129 of Chapter 2, which lays down that there shall be a Governor for each State, was considered, Mr Lakshminarayan Sahu (Orissa) moved an amendment that there should be at least one Governor from each of the States. The purpose of his amendment, Mr Sahu said, was that no province should be denied the opportunity of securing a Governor, if such a provision was not made, it was possible that no person from a small province like his would get a Governorship.

Mr Brajeshwar Prasad (Bihar) opposing the Article, said there was no necessity for any Governors at all. Provincial autonomy was given by the British and should be abolished, as it lead to distrust of the Centre. Federalism meant separation of powers which doctrine had been exploded. Part 6 of the Constitution should not be hurried.

Dr Deshmukh (C.P. and Berar) wanted a strong unitary Government for India. The present constitution was a mere repetition of the Government of India Act which was framed in Britain. Experience had shown that there were many dangers ahead of the present constitution, and if they wanted to avoid them, radical changes were necessary.

UNITARY CONSTITUTION

Indians must find a way which would be ideally suited to the conditions of the country. He asked why we should not decide upon a unitary constitution which would have the co-operation of the people of the country. Once autonomous powers were taken away from the provinces, and were concentrated in the Centre, all provincial jealousies would disappear.

Mr Sidhwa said he sympathized with Mr Sahu's view that Governors should be chosen from every province and not from only one or two provinces. He, however, felt that it was not proper to put in an amendment to that effect.

Mr Rohini Kumar Chaudhuri (Assam) asked whether there was any able man in Assam or Orissa, if there was an able man in either of these provinces, he would have found a place as a Minister or Governor or Ambassador or Judge. "You cannot say," he said "that the persons who choose people for these appointments are not responsible persons or that they do not exercise sound judgment."

He agreed with Mr Sahu that the claims of each province must be considered while making these appointments.

Mr Sahu's amendment was rejected and the Article adopted.

The House also adopted Article 130, which says that the executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the constitution and the law. Nothing in this Article shall be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or prevent Parliament or the legislature of the State from conferring by law functions on any authority subordinate to the Governor.

ELECTION OF GOVERNOR

The House next discussed Article 131, which says that the Governor of a State shall be elected by direct vote of the electorate, or alternatively, shall be appointed by the President from a panel of four candidates to be elected by the Legislature.

Mr B. Prasad moved an amendment to the effect that the Governor of a State shall be nominated by the President by warrant under his hand and seal.

Mr Mohammed Tahir (Bihar) asked whether a member was competent to move an amendment which went contrary to the unanimous decision of the House taken earlier that Governors should be elected.

The President, Dr Rajendra Prasad, said that it was open to the House to alter its previous decision.

Mr Sahu said that under the rules of the House, an earlier decision could be reconsidered only if one-fourth of the members desired to do so.

Dr Prasad replied that he assumed that the House was in favour of reconsideration, but if Mr Sahu desired, he would take the sense of the House.

Mr Kamath, supporting Mr B. Prasad, said there were sound reasons for altering the earlier decision. The emphasis at that time was on the federal aspect of the constitution, while the emphasis today was on the union pattern. Much could be said in favour of Dr Deshmukh's proposal for a strong unitary system of Government in India at this particular juncture in the country's affairs, but on a long-range view it would not be advisable to do away with the system of provincial autonomy.

KIND OF GOVERNMENT

The crux of the matter was what type of Government India was going to have. If she was going to have a parliamentary system then the method of direct election of the Governor was appropriate. If the Governor were to be elected by direct vote, then he might consider himself to be superior to the Premier, who was merely returnet from a single constituency, and this might lead to frequent friction between the Governor and the Premier.

The choice of the Governor out of a panel elected by the Legislature was also open to objection. If, for instance, the President did not choose the man whose name was first on the list, the choice might not be liked by the Minister. The system might also give rise to "jockeying" by groups for first place on the panel.

Sardar Hukum Singh held that the alternative draft Article regarding the appointment of a Governor by the President from a panel of four candidates to be elected by members of the Legislative Assembly steered a middle course between the two extremes of pure nomination and pure election. He said that the election of Governors might prove expensive and troublesome leading to a conflict between the Governor and the Premier, but it was unwise to leave so much discretion with the Executive at the Centre.

Mr Alladi Krishnaswami Ayyar, supporting Mr B. Prasad's amendment, said that on the whole Government Assembly had accepted the introduction of responsible government in different States and the Governor was merely the constitutional head of the province, the real executive power being vested in the Ministry responsible to the Lower House.

The House should consider, therefore, whether in these circumstances there was any point in going through the expensive and elaborate machinery of election based on universal suffrage.

Of all the suggestions, namely, the election of the Governor on the basis of universal suffrage, the election by a majority of the Lower House on the principle of proportional representation, selection of a panel by the Lower House in the State from which the choice was to be made by the President, and, finally, the appointment by the President made in consultation with his Cabinet he felt the wisest course to adopt was the last one. If the Governor was to function as the constitutional head, the expenses involved and the elaborate machinery of election was out of all proportion to the powers vested in the Governor.

INDIAN GOVERNORS

He said that there was no comparison between a Governor in the USA and a Governor under the Indian Constitution. In the USA the Governor was the real Executive. The proper analogy had to be sought for in the Canadian constitution. If the principle of responsible government was the main feature of the Constitution, he had no doubt that in the normal working of the Constitution, a convention would grow by which the Government of India would consult the provincial Cabinet while appointing the Governor.

Replying to the argument that the Central Executive was being vested with too much powers, Mr Krishnaswami Ayyar said that if powers could be conferred on the Prime Minister to appoint the Commander-in-Chief of all forces, ambassadors in different parts of the world, the Chief Justice and Justices of the Supreme Court and high officers in the Cabinet, there could be no objection to the appointment of the Governor being left to the President who would necessarily act on the advice of the Prime Minister.

As regards the panel system it was fraught with dangers. In the interest of good working of the Government, and of sound relations between the provincial Government and the Centre, it was much better to adopt the Canadian model of appointment of the Governor by the President.

Supporting the amendment, Dr Deshmukh said that if they had decided that the Governor should be elected on adult suffrage, it followed that he should be clothed with real Executive authority. On the other hand, if they wanted the Governor to be a mere figurehead he should be appointed by the President. So long as the present structure of the constitution, based on the principle of responsible Government continued, the Governor must necessarily be the constitutional head without any authority to interfere in the day-to-day administration, and the possibilities of friction and clash could be avoided. He also wanted that the appointment of a Governor should be during the pleasure of the President.

CHANGED CONDITIONS

Mr B. G. Kher also supporting the amendment said that conditions in the country had changed since the Assembly took the decision on this issue in 1947. In other matters than this, the House had gone back on the decisions which at that time it thought proper. Experience had taught them that the system of appointment of the Governor worked fairly well in practice.

He thought that the election of a Governor, on the basis of adult suffrage, was not advocated by anybody in the House. Apart from the expenses it would involve, it would put at the head of the province a person who was elected by the people of the State, but the power would, under the constitution, be vested in the Prime Minister.

It was bound to give rise to conflicts which it was desirable to avoid. The Governor represented the State and the Premier the largest party in the House, and was, therefore, responsible for whatever happened in the administration. So far as the Governor was concerned, the constitution had given him very few powers but he was not a mere figurehead. A Governor could do a great deal of good if he was a good Governor and a lot of mischief if he was bad.

Pointing out the defects of the panel system, Mr Kher said that if four or five persons were put up for or aspired to a Governorship, in the course of election even in the Legislature there was bound to be some canvassing and whatever happened it would mean a lot of disgruntled people in the House. If the House wanted the leader of the House or the Prime Minister to be responsible for good government, then he must have power to appoint people whether they were colleagues in the Central Cabinet or Governors of States.

Having deliberately chosen the British model of responsible Government, and having decided to give the Governor the position of the titular head of the Executive, the only insurance for smooth government in the province was to allow the President of the country to nominate a person who enjoyed his confidence, which meant the confidence of his Cabinet, and also the Cabinet of the province. Any other method would give rise to friction.

Mr Rohini Kumar Chaudhari said the Constitution Committee had two years ago decided that Governors should be elected and asked why that decision should now be changed in the case of nomination. The President of the Union would have to take the advice of the Prime Minister who would be the leader of a party and, therefore, the nomination, he said, would be influenced by political considerations.

Mr Chaudhari then read out the pledge taken by Governors before they assumed office. In this pledge they undertook office to work for the well-being of the people, and said that a nominated Governor would not be able to work for the welfare of a province, because he would be a foreigner to that province and would not be able to understand anything about it.

Referring to the point raised by members earlier that if the Governor was elected there would be friction between him and the provincial Premier, Mr Chaudari said there was more chance of friction between a nominated Governor and the Premier of a province because the Prime Minister of the Union, on whose advice the nomination was made and the Premier of the province might not belong to the same party.

Mr Chaudhari argued that if the Governor was nominated certain sections of the people of a province would be neglected. He instanced the case of the tribal people of Assam. If the Governor was elected in Assam, he would watch the interests of the backward tribes who would also have a hand in his election.

Certain members had raised the point that the election of the Governor would be a stupendous task involving much expenditure but he felt that if the election of the Governor was held during the general elections, there would be no extra expenditure.

UNCHANGED OPINION

Pandit Kunzru said that two years ago he was one of the few unfortunate men in this House who tried to persuade it not to resort to the system of election of Governors on the basis of adult franchise. He was glad to find that opinion in the House had changed and that even Mr Kher, who had stood emphatically for election, now favoured a different procedure.

He reminded the House that the Draft Constitution, though it gave a great deal of power to the Central Executive and the Executive, did not provide for a unitary system. It had not reduced the provinces to the level of municipalities and District Boards. The provinces would, notwithstanding the reduction made in their authority, still have the power exclusively to control certain subjects.

The responsibility of the Prime Minister for the good government of the country could not extend to the sphere that would be exclusively under the control of the provincial Parliament and Executive. This should be clearly realized lest there should be a serious conflict between the Central Government on one side and the provincial Governments on the other.

GROWTH OF DEMOCRACY

Another important consideration which should be borne in mind was that the constitution should be such as would permit the free and full growth of democracy and prevent the establishment of a dictatorship. "At the present time", he said, "it may seem to many of us that great confidence is reposed by the country in the judgment of the Central Executive than in that of the provincial Executives. But in the first place this can be no reason for reducing the provincial legislatures and Governments to a position of utter subordination to the Central Legislature and Executive. In the second place, things may not always remain as they are now.

"It is easy to conceive of a time when the Central Government will not inspire as much confidence as at least some of the provincial Governments may. If you entrust the Central Executive or the Central Legislature to exercise control over the provinces in all important matters and let them fall in line with the policy of the Centre, there is a serious danger of the country falling under a dictatorship".

When conflicts arose between the provinces and the Centre, said Pandit Kunzru, it was probable that they would be regarded as serious by the country generally if they related to matters coming within the purview of the Centre. In that case, the Centre would, under the constitution, have adequate means of dealing with such a situation. "But", added Pandit Kunzru, "let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive".

Pandit Kunzru pointed out that under Article 175 as it stood, a Bill could be reserved for the President's consideration by the Governor, but if the Governor did not do so, the President did not come into the picture at all. In this situation it was clear that the Centre would instruct the Governor to reserve for the President's consideration certain Bills that it did not approve of.

Mr T. T. Krishnamachari: "Article 175 has yet to be passed the House and it is more than likely that it will be reshaped so as to fit in with the amendment that is now before the House if the amendment is passed".

Pandit Kunzru: "That is exactly what I wanted. It will be better, instead of using the Governor as the instrument of the President, to give the President the power of disallowing provincial Bills within a certain period. In that case, the responsibility both in form and in reality will be that of the Governor-in-Executive. Otherwise there is likely to be friction between the Governor and his Cabinet."

Pandit Kunzru said he did not know whether it was proposed also to modify Article 188 (Power of Governor in Grave Emergencies) in view of the change which was sought to be made as regards the method of appointing Governors. When the House resolved two years ago in favour of election of Governors, the main argument was that the situation was of such a character as to require that the Governor should have the power of acting decisively in grave emergencies.

It was felt that responsible Ministries depending upon popular votes might not in a crisis be able to act with the strength required. The opinion of the House on that subject had changed and he hoped that this Article would be amended so that it might be consistent with the establishment of responsible ministries in the provinces and might not lead to bitter conflicts between the Governor and his Cabinet."

"Let such control as has to be exercised in emergencies under the constitution be exercised by the President of the Republic directly and not through the Governor so that the Governor and his Cabinet may not seem to be in conflict with one another to the public at large".

The debate had not concluded when the House adjourned.—API.

The Bombay Chronicle

4-6-49

When anger rises, think of the consequences.
—CONFUCIUS.

GOVERNOR'S POWERS

The powers of the Governor under the new constitution came in for much unmerited criticism in the Constituent Assembly. Evidently the critics were influenced by the persisting prejudices of the old regime and sought to strip him of every vestige of power or influence. If the Governor was meant to be a mere dummy, it would have been best to spare the country such a costly show. As it was the desire of the Assembly to find room for the Governor of a State, corresponding to the President of the Union, it followed that the Governor must have some specified duties and the necessary powers to discharge them. He is expected to be the constitutional head of the State and as such he must have opportunities to offer suggestions to the Ministry, though he must ultimately accept the considered advice of the Ministry. This does no violence at all to the democratic character of the constitution but minimises the chances of an unconscious error by one or more Ministers acting on their own responsibility in their particular department. This right to offer suggestions to the Ministers cannot in fairness be grudged to one who stands above all parties and is also expected to be a link between the State and the Union.

If this is conceded, there need not have been any objection to Article 147, which requires the Chief Minister of the State to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation and to furnish such information about these matters as the Governor may call for. Under the article, the Governor has also the power to submit for reconsideration by the Council of Ministers any matter on which a decision had been taken by a Minister and which had not been considered by the Council. Precisely similar powers were conferred on the President by Article 65. The Governor's right to be fully informed of administrative affairs by his Chief Minister cannot be seriously questioned. As regards his asking the Council of Ministers to consider a matter which had been disposed of by only one Minister, this is an advantage to the Council itself. It often happens that Minister commits an error—not always unconsciously—and he is too proud or obstinate to reconsider his own decision. The party or parties aggrieved appeal to the Prime Minister, who may at least feel that the question deserves to be considered by the whole Council. He may himself move in the matter, but if for understandable reasons he fails to do so at least the Governor should have the opportunity to move the Council. It is unreasonable to object to this as, after all, the final decision rests with the Council of Ministers. There is no chance of the article creating any friction between the Governor and the Council. The Minister against whom the appeal is made, may resent what he may call interference but there will be no deadlock. If the Council decides in favour of the Minister, the Governor will be more careful thereafter. If the decision is against the Minister, the Governor's intervention will have been vindicated.

It may be noted in this connection that all the duties of a Governor are not mentioned in the constitution. Dr. Ambedkar, who has naturally given serious thought to the implications as well as the provisions of the Draft Constitution, remarked that the Governor must see that the administration was good, efficient and honest, that it was kept in power without corruption and partiality and that the proposals initiated by the Ministry were not contrary to the wishes of the people. This is not specifically mentioned in the constitution. It is meant to be part of the unwritten law that is expected to be built up through conventions familiar in the British constitution. It is the spirit of the constitution as a whole that will help to build up wholesome conventions. That spirit is democratic through and through. It will be impossible for a Governor, who is universally expected to act as a constitutional head, to misuse his opportunities to exercise a wholesome influence on the State executive.

Right Of Appeal To Supreme Court In Criminal Cases

C. A. DEBATES QUESTION OF JURISDICTION

NEW DELHI, June 3.

THE Constituent Assembly today debated for over three hours the question of jurisdiction of the Supreme Court when it took up consideration of some articles relating to the "Supreme Court" which were left over earlier.

The central point of the debate was whether the Supreme Court should have unqualified and unlimited criminal appellate jurisdiction or not.

Though the relevant article, namely Article 112, relating to appeals by special leave was yet to come up for discussion, the subject was introduced when some members complained that the right of appeal in criminal cases involving death sentences was not provided for with the same facility as in the case of civil suits.

Jurists and lawyers including Mr. Alladi Krishnaswami Ayyer, Mr. K. M. Munshi, Pandit Thakurdas Bhargava, Dr. Ambedkar, Dr. P. K. Sen and Dr. Bakshi Tekchand participated in the discussion.

Of twelve members who took part in the debate eight including Pandit Lakshmikant Maitra and Mr. F. Anthony complained that the right of appeal in criminal cases involving death sentence was denied while in the case of civil suits with stake of over Rs. 20000 automatic right of appeal was provided. They urged that the sanctity of human life and liberty must be considered more valuable than that of property.

Members of the Drafting Committee pointed out that unlimited provision in this regard would involve the appointment of a very large number of judges and the future Parliament could, after statistical investigation vest the Supreme Court with such jurisdiction in those cases where it was practical.

Dr. Ambedkar said that the debate was irrelevant to the article before the House, namely the appellate jurisdiction of the Supreme Court in appeals from High Courts in cases involving the interpretation of the constitution.

He suggested the abolition of capital punishment as a better method than the provision for investing the Supreme Court with appellate jurisdiction and said: "This country, by and large, believes in the principle of non-violence and has many adherents to the principle. The proper thing for us to do is to abolish death sentence altogether so that we may not have the controversy at all".

The House adopted Articles 109 and 110 dealing with the Original and Appellate jurisdiction of the Supreme Court.

Earlier resuming consideration of articles relating to the disqualifications of members of the legislatures of the States, the Constituent Assembly adopted Article 168 concerning the penalty for sitting and voting before making affirmation or taking an oath or when the member is not qualified or when he is disqualified. The penalty prescribed was a fine of Rs. 10 per day.

Mr. Lakshminarain Sahu (Orissa) felt that the provision was unnecessary as such persons, he said, could be prosecuted for criminal trespass under ordinary law.

Privileges Of Legislators

The House then proceeded to discuss articles on the privileges and immunities of the members of State legislatures, which were identical to the provisions made in regard to members of the Central Parliament. Objections were, however, raised by a few members to the reference in the constitution to the House of Commons.

Mr. H. V. Kamath (C.P.) said that most of the Press in India was critical about the provisions made in Article 85 in respect of the privileges of the members of Central Parliament and reference there to the House of Commons. Nobody knew, he said, what exactly the privileges of the members of the House of Commons were and it was unwise on the part of the Drafting Committee of a written constitution to refer to an unwritten constitution.

Mr. Naziruddin Ahmed (West Bengal) suggested the incorporation of a schedule in the constitution listing the privileges of the members.

Dr. Punjabrao Deshmukh (C.P.) supporting Mr. Kamath, suggested that the article should merely state that the privileges of the members of the provincial legislatures would be co-extensive to the privileges which the members of the Indian Parliament enjoy. It would save a second reference to the House of Commons and eliminate the possibility of each State formulating rules on its own idea of privileges.

Pandit Thakurdas Bhargava said that the Drafting Committee had attempted to define the privileges of members. He deprecated the tendency of shelving important questions if they were inconvenient.

Dr. Ambedkar replying to the debate pointed out that the privileges fell into two categories—the privileges of individuals, such as freedom of speech and immunity from arrest while discharging their duty, and the privileges of Parliament.

Under the House of Commons Rules, Dr. Ambedkar said, it was open to Parliament to commit any citizen for contempt of Parliament. When any such privilege was exercised, the jurisdiction of the court was ousted. Further, it was open to Parliament to take action against individual members of Parliament for bringing the Parliament into disgrace. It was not an easy matter to define either what should be regarded as contempt of Parliament or the actions or deeds of individual members which would bring the Parliament into disgrace. It would require a considerable degree of discussion. That was one of the reasons why the Drafting Committee did not think of enumerating these privileges.

Dr. Ambedkar said Parliament, no doubt, should have certain privileges without which it would be exposed to calumny and unjustified criticism with the result that parliamentary institutions in this country would be brought into utter contempt. To set out in detail the privileges and immunities of Parliament and its members would mean considerable discussion. This was therefore ruled out.

The second course was to state that the existing provisions stood till Parliament could make provisions. The present Act conferred no privileges or immunities on Parliament or members, excepting freedom of speech and immunity from prosecution for what had been stated inside Parliament. The only other course was the one adopted by the Drafting Committee. Excepting a sentimental objection to the reference to the House of Commons, there was no substance in the argument against the course.

Replying to Dr. Deshmukh, Dr. Ambedkar said that many of the provisions in regard to a State were identical to those made in respect of the Centre, and it would be odd if the House had not adopted the course only in this article.

The House passed the article.

Amendment to Prevent Discrimination

After Article 170 on salaries and allowances of members of the States' legislatures was adopted, Prof. K. T. Shah, moved an amendment for the inclusion of a new Article, 170-A, seeking to give powers to State legislatures to move the Supreme Court to prevent discrimination by one State against the citizens of another State who might be carrying on trade or engaged in professions in that State.

Prof. Shah said that inclusion of such a provision was of utmost importance in view of the inter-provincial jealousies and rivalries which were prevalent in the country and which required urgent attention.

Prof. Shibban Lal Saxena (U.P.), opposing Prof. Shah's amendment, said that the constitution had already provided against inter-provincial discrimination in the fundamental rights chapter.

Mr. H. V. Kamath (C.P.) supporting Mr. Saxena's contention said that the remedy suggested by Prof. Shah would only aggravate the disease and encourage provinces to meddle in the affairs of other provinces.

Dr. Panjabrao Deshmukh (C.P.), opposing Prof. Shah's amendment, said that States would have to take steps against usurers and other exploiters coming from other States and a provision of the nature suggested by Prof. Shah would only protect them.

Prof. Shah withdrew his amendment.

Jurisdiction of Supreme Court

On a suggestion from Mr. T. T. Krishnamachari (Madras) the House took up consideration of articles relating to the jurisdiction of the Supreme Court which had been held over earlier.

Article 109 lays down that the Supreme Court will have original jurisdiction to adjudicate in inter-state disputes.

Mr. T. T. Krishnamachari moved an amendment which sought to delete the proviso restricting the jurisdiction of the Supreme Court in disputes in which an Indian State was involved.

Mr. Krishnamachari said if it was found necessary to make any specific provision with regard to Indian States it could be provided in a separate chapter.

Mr. Brajeshwar Prasad said he was entirely opposed to Article 110, as he was against federalism and the idea of having a Supreme Court. He said the Government of India should enjoy the exclusive powers to adjudicate in disputes between States.

Mr. Pattom Thanu Pillai (Travancore) supporting the amendment said he was glad that the Indian States were brought in line with the provinces in regard to the operation of the Supreme Court.

Article 110 relating to the jurisdiction of the Supreme Court to hear appeals from High Courts of States in certain cases was next taken up for consideration.

Mr. Raj Bahadur (Matsya Union) wanted by an amendment substitution of the word "territory" for the word "State." He said the word "State" restricted the interpretation of this article and did not include new territories that might be acquired by or might come of their own accord to the Indian Union.

Mr. Naziruddin Ahmed (West Bengal) moved two amendments for deletion of the words in the article which restricted the power of the Supreme Court to appeals involving interpretation of the constitution. He wanted that the Supreme Court should have power to deal with all disputes involving substantial questions of law. High Courts should be enabled to refer to the Supreme Court all cases involving interpretation of statute law, whether civil or criminal. The functions of the present Federal Court and the Privy Council should be combined in the Supreme Court, he said.

Right Of Appeal

After Mr. Naziruddin had moved his amendments, a prolonged debate ensued in the House on the question of jurisdiction of the Supreme Court.

Mr. Alladi Krishnaswami Ayyar pointed out that Article 111 dealt with the general right of appeal to the Supreme Court in cases in which civil rights were involved. In every case for right interpretation of law, irrespective of the value of the subject matter, there was a right of appeal to the Supreme Court. In criminal or civil proceedings in which a constitutional point was involved, there was a right of appeal and in other cases by special leave. An application could be made to the Supreme Court. There was nothing to prevent the Supreme Court, when cases involving interpretation of the constitution came up, to deal with matters other than constitutional, contained in those cases. The Supreme Court of the Indian Union, Mr. Alladi Krishnaswami Ayyar declared, had more powers than any Supreme Court in any part of the world.

Mr. Rohinikumar Choudhary asked whether a man sentenced to death in a criminal case had the right of appeal to the Supreme Court. He thought that no such provision was made.

Pandit Thakurdas Bhargava said that in civil cases where the property involved was over Rs. 20,000 the right of appeal to the Supreme Court was given, but in the case of a poor man involving substantial question of law was involved, he had no right to appeal. So far as criminal law was concerned there was no corresponding provision of appeal as in the case of civil suits. An amendment which Dr. Ambedkar proposed to move conferred the right on Parliament to invest the Supreme Court with criminal jurisdiction. It would take years before the Parliament would be able to deal with this matter of life and death. He argued that in cases where the question of life and personal liberties was involved, the people should have absolute right of appeal and not the right of appeal by special leave.

Mr. Kishenchand Sharma (U.P.) said that from the practical point of view it would be impossible for the Supreme Court to deal with criminal cases if there was no limitation to the right of appeal. Ample provisions had been made to meet the needs of justice.

Prof. Shibbanlal Saxena citing his personal experience said that when he was in jail and was confined to a "condemned cell," he came across 37 people who were condemned to death. Seven of them were acquitted on appeal and in regard to ten their sentence was reduced while others were hanged. He was convinced that among those who were hanged at least seven of them were innocent. He was fully acquainted with the feelings of those who had been condemned to death. He would, therefore, demand that a man who was condemned to death must have the inherent right of appeal to the highest tribunal in the country.

Mr. Frank Anthony said that the provisions had been conceived by the civil lawyers in the interest of civil litigants. More than ample security had been given to civil litigants and he felt that the Drafting Committee had set an absolutely low limit of Rs. 20,000 in the matter of civil appeal. What hardships would be caused to the capitalists blackmarketers and civil litigants if the limit was raised to Rs. one lakh. Why should there be greater sanctity to Rs. 20,000 than to the life and liberty of the Indian people? he asked. He felt that it involved a denial of justice by not giving a man who was sentenced to death an automatice right of appeal. He said that the argument that such right would lead to an enormous volume of work demanding the services of several judges was untenable. It was a question of vital importance involving a fundamental principle of jurisprudence.

Moral Necessity

Dr. P. K. Sen, a former Judge of the Patna High Court said that he had great sympathy with the views expressed by Pandit Bhargava and Mr. Anthony. There was a provision with regard to special leave for appeal to the Supreme Court in criminal cases. It hardly gave any emphasis to the question of appeal against death sentence as it should. It might be that Parliament might make provisions with regard to acceptance of appeal in cases of death sentences. He urged that the House should not by any manner follow the British convention as a model one. In matters of punishment or penal legislation, he said, Great Britain had been the most backward and most conservative. Best efforts there had not succeeded in persuading public opinion against abolition of the capital punishment. Britain had been slow and tardy in recognising that many of the capital cases should be excluded from the list of capital cases. A boy of 16 who could not avoid the temptation of lifting a doll from a shop was hanged. He cited examples to show that up to this time the Privy Council had been very chary in admitting appeals against the decisions of the High Court. In criminal cases, appeal lay when the undefined natural justice had been violated. The question before the House was the recognition of the sanctity of human life. If the House was impressed by the moral necessity, it had to find ways and means of providing for it in the constitution.

Dr. Panjabrao Deshmukh said that there had now been considerable encroachment of civil liberties all over India and people would be aghast if they considered the figures of those now in jail with those during the worst period of British regime. In Bombay there had been a wholesale internement of people from one district to another. There were certain liberties of the people which could not be covered by the fundamental rights and the ingenuity of the law members of the Future States being unlimited, he felt there was every necessity to protect the liberty of the people. From this point of view he urged that there should be equal facility of approach in criminal cases as had been provided for in the matter of civil cases.

Vigorously supporting the previous speakers, Pandit Lakshmikant Maitra said the question was whether the House proposed to place human life far below the value of property. It would not be right for the House to be scared away by the prospects of employing more judges in case they gave the right of appeal to condemned men. He said that the right of appeal in criminal cases should be embodied in the form itself and it should not be left to the future Parliament to decide.

Practical Considerations

Dr. K. M. Munshi said that the House should consider the question from the practical point of view. The present jurisdiction of the Privy Council (and the Supreme Court) to interfere in matters where there was miscarriage of justice in criminal matters was retained to the fullest extent. The next question was whether there should be criminal appeal and if so under what condition. Mere criminal appeal would mean not less than 100 judges and even if it was a question of death sentence a very large number of judges would be needed to deal with not less than 1000 appeals. They had to consider the conditions under which appeal would lie. This could be done by elaborate provision of law by parliament. It was not that the House did not favour the idea of criminal justice. Those appeals must necessarily be under certain restricted conditions which might be laid down by Parliament rather than in the constitution itself.

Dr. Bakshi Tek Chand (East Punjab), a former Judge of the Allahabad High Court, pointed out that Mr. Naziruddin Ahmed's amendment which gave rise to the debate was entirely different from the question which had been discussed by the previous speakers. The Article dealt with the right of appeal to the Supreme Court in cases in which interpretation of the constitution was involved and there was unrestricted right of appeal whether the cases were civil or criminal. It was the most valuable right and must be adopted. The speeches that had been made wanted to bring the question of criminal law "through a backdoor". Replying to Mr. Anthony, he pointed out that the limit of suit value in regard to appeal from High Court in civil suits had been raised from Rs. 10,000 to Rs. 20,000 seventy-five per cent appeals to the Privy Council related to those whose value had been raised from Rs. 10,000 to Rs. 20,000 and therefore the constitution was not dealing with a new to increasing the civil litigation. With regard to criminal matters, he said, the proper forum for raising this question was during the discussion of Article 112. The amendment proposed to that Article sought to confer by legislation by the future Parliament jurisdiction on the Supreme Court and emphasised the necessity of framing laws in this connection.

DR. AMBEDKAR'S REPLY

Dr. Ambedkar said that the debate had gone very far afield and had been "wandered away" from the immediate point raised by Mr. Naziruddin Ahmed. He pointed out that the matter was going before the Supreme Court came—where it involved the question of constitutional law—the minimum number of judges who should sit to hear such cases should be five while in other cases of appeal the matter of constituting the bench was left to the Supreme Court itself. To provide for this distinction only, different Articles relating to appeals to the Supreme Court had been separately incorporated.

Dealing with the debate on the question of criminal jurisdiction of the Supreme Court, Dr. Ambedkar said that the debate was absolutely irrelevant and beside the point. He would however reply in detail to the points raised.

Dr. Ambedkar pointed out that Article 110 provided for appeal in criminal cases if the matter involved constitutional law. There was one way by which criminal cases would come up before the Supreme Court by Article 112, the Supreme Court by special leave draw to itself criminal cases, and decrees or final orders in any case or matter whether civil or criminal. He had noticed considerable feeling among lawyers dealing with criminal cases that Supreme Court should be vested with powers to hear criminal appeals at least involving death sentence. There was force in the argument. The question was the method of its provision, whether it should be done by specific clause in the constitution itself. He felt that it could better be left to the Parliament. The Parliament could deal with the question much better as it involved some kind of statistical investigation.

"The other view rather than the provision of power upon the Supreme Court to hear criminal appeal in cases of death sentences," said Dr. Ambedkar amidst cheers" is the abolition of death sentence itself. I think that is the proper course to follow so that we may end this controversy. This country by and large believes in the principle of non-violence. It has been her ancient tradition. Some people may not be following it in actual practice but all certainly adhere to the principle of non-violence. The proper thing for our country therefore is to abolish death sentence altogether so that we may not have the controversy at all." (cheers)

The House rejected Mr. Naziruddin Ahmed's amendment and adopted the article.

Appeals From High Courts

The House took up Article 111 for consideration. The article gives Supreme Court appellate jurisdiction to hear appeals from all High Courts of States of the Union, except those from High Courts in Indian States.

Mr. Raj Bahadur (Matsya Union) moved an amendment that the exception made in the Article with regard to appeals from High Courts in Indian States should be removed. It was the desire of the people of the Indian States that they should be brought on a par with the provinces in regard to jurisdiction of the Supreme Court.

Dr. Bakshi Tek Chand (East Punjab) sought by an amendment to change the clause which laid down that the value of the subject matter of appeals to the Supreme Court from High Courts should not be less than Rs. 20,000. He wanted that Parliament should be given power to fix any other amount by law. He said that if a change was designed in view of changes in economic conditions, the constituents would have to be amended which was not easy.

Dr. Ambedkar moved an amendment similar to that of Dr. Bakshi Tek Chand.

Mr. Naziruddin Ahmed, by an amendment, wanted the amount to be fixed at Rs. 15,000 which would be better in the interests of rich and poor alike. He disagreed with Dr. Tek Chand's amendment, saying that the Constituent Assembly could not shirk its responsibility and leave such matters to Parliament. If valuation was fixed by Parliament, it would cause difficulties as the amount would fluctuate from day to day, he said.

After Dr. Ambedkar had moved another amendment seeking to bar appeals to the Supreme Court in cases decided by one Judge of a High Court or in cases where Judges were equally divided in their opinion the House adjourned to meet on Monday.

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NO APPEAL

While the Draft Constitution of India has provided that in all civil suits involving Rs. 20,000 or more there shall be a right of appeal to the Supreme Court, it has denied such right to persons sentenced to death or transportation for life. But unfortunately for the Government which has overawed the members of the Constituent Assembly by "disciplinary" action, discordant notes are sometimes, though at lucid intervals sounded even in the usually docile House. The deliberate exclusion of the jurisdiction of the Supreme Court over criminal appeals even in cases involving capital sentence seems to have disturbed to some extent the serene atmosphere of the Constituent Assembly which easily reconciled itself to the provision for nominated Governors with their discretionary and overriding powers. "It was really surprising", said a member from East Punjab, "that in cases where the amount of subject-matter of dispute was Rs. 20,000, appeals could be automatically preferred to the Supreme Court, but the man who had been condemned to death had not the similar right." Even an Anglo-Indian member declared that "he did not understand why greater sanctity was given to property than to human life."

But was this greater sanctity attached by the Congress Government to property than to human life really a mystery? Is not the Congress Government dominated by capitalists, profiteers and black-marketers who are more interested in the sanctity of their ill-gotten booty than in the sacrosanctity of human life? Besides, the Indian Constitution has copied many of the vices and defects of the British Constitution without incorporating its good points. Neither the British Constitution nor British jurisprudence allows any inroad on personal liberty of British citizens. The Safety of the Realm Act which made some departure from the fundamental basis of British jurisprudence was a temporary war time measure which was applied with extreme caution. But the Congress Government in India cannot function for a day even in normal times without the aid of the Security Acts. These are applied with a vengeance against those who are anxious to establish a "classless society" and "Krishak-Praja-Mazdur Raj." And yet, Dr. Suresh Banerjee, President of West Bengal Provincial Congress Committee, wants the public seriously to believe that the creation of "classless society" was also the ideal of the Congress. That a Government which has a soft corner in its heart for profiteers and black-marketers would make provision for ensuring the sanctity of money and would attach less value to human life was hardly surprising. Mr. K. M. Munshi who happens to be a friend, philosopher and guide of the Congress Government emphasised that if the Supreme Court were to be vested with criminal jurisdiction it would mean appointment of more Judges and, therefore, more cost to the people. But would the masses be taxed only to ensure the sanctity of the black-marketers' money? Is human life so very cheap in the eyes of the Congress Government and its supporters that any extra expense for giving a condemned man an opportunity to appeal to the Supreme Court is to be considered as useless expenditure and luxury?

We possibly forget that a Government which does not seem to be in the least ashamed of police shooting of innocent men and even women cannot be expected to be much anxious for giving an opportunity to condemned men to appeal to the Supreme Court. But public opinion must assert itself and should force the Government to attach due sacrosanctity to human life and liberty, both of which seem to be anathema to our ruling leaders.

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India news chronicle 1-6-49

FIVE-YEAR TERM FOR GOVERNORS

'Nomination' Proposal Approved By India Assembly

NEW DELHI, Tuesday.—The Constituent Assembly today decided by an overwhelming majority in favour of the method of appointment by the Union President for filling up the office of Governors of States of the Indian Union. Mr. Brajeshwar Prasad's amendment which had suggested this method was adopted after it had been discussed threadbare for over four hours yesterday and today.

The Prime Minister, Pandit Nehru, who participated in the debate said that in the present context of the Constitution, the proposal to have nominated Governors was desirable not only from the practical point of view but also from the democratic point of view. He felt that the method of election of Governors would to some extent, encourage separatist tendencies in the provinces.

The House adopted an Article prescribing a five-year tenure of office for the Governor of a State, subject to the provision that he would hold office during the pleasure of the President. An amendment by Prof. K., T. Shah seeking to provide retirement allowances to Governors was rejected.

The Assembly adopted an amendment moved by Mr. H. V. Kamath leaving the option to the Governor to take the oath of office in the name of God if he so desired. It was made clear that taking of God's name would not be compulsory.

Dr. P. K. Sen (Bihar), supporting Mr. Brajeshwar Prasad's amendment said that an elected Governor would not serve the best interests of Parliamentary democracy.

"When the whole of the executive power is vested in the Council of Ministers," he said, "if there is another person who believes that he has got the backing of the province behind him and, therefore, can at his discretion intervene in the governance of the province, it would really amount to a surrender of democracy".

DEMOCRACY-CUM-AUTOCRACY

Mr. Biswanath Das, former Premier of Orissa, who had given notice of an amendment in favour of election of the Governor by the State Legislature, declared that he had decided to abide by the joint wisdom of his party (Congress) and of the House, but would be failing in his duty if he did not express his feeling that the method of nomination would not work properly. Acceptence of Mr. Prasad's amendment would mean that while the provincial Cabinet would be elected democratically, the Governor was to be chosen autocratically "You cannot have democracy and autocracy working and functioning together," said Mr. Das.

"Even a village panchayat is asked to choose its own President, would you deny the same right to the State Legislature".

Mr. Das said while he was serving as Premier of Orissa under the former regime, the Governor had all along been attempting to smash his party. He had no doubt that the present leaders of the country would never think of resorting to any such practice but he would appeal to the House to take the necessary precautions.

"If men like Pandit Nehru and Sardar Patel were to be in office continuously, I will have absolutely no complaint, but human life is temporary and parties rise and fall.

"You may have different parties in power at the Centre and in the provinces. What was done by a Governor under British Imperialism may also be done by another party".

He regretted that the previous decision of the House in favour of election was now sought to be altered.

Shrimati Durgabai (Madras), supporting the principle of nomination, said that if the Governor were to be "at the mercy of the people", he would not be able to remain above party politics.

The panel system had been tried by the universities and had not worked satisfactorily. Every appointment had resulted in disappointment to the other candidates and the defeated candidates had created a lot of trouble for the Vice-Chancellor.

TOP HEAVY ADMINISTRATION

Prof. Shibban Lal Saksena (U. P.) said that nominated Governors would not have the same prestige as elected Governors. He favoured election because he felt that the method of nomination had not been a success. Moreover, the Prime Minister had already been authorised to choose judges, Ambassadors and high officials and it was not advisable to give him still more powers in the choice of a Governor. There was no guarantee that future Prime Ministers would be of the same calibre as Pandit Nehru.

ROLE OF GOVERNOR

Munshi Explains Reason For Proposed Change

Mr. K. M. Munshi explaining the reasons why the Drafting Committee had changed its view on the subject said that originally the process of election was favoured because it was felt that a strong President at the Centre and strong Governors in the provinces were necessary for stable administration. Once it is was decided that the President and the Governors should be mere constitutional heads the question of election was naturally eliminated. A Governor elected on adult franchise to be at the top of the political life in the province would soon prefer to be the Prime Minister or a Minister with effective powers. The party in power during the election would naturally put up for Governorship a person who was not as outstanding as the future Prime Minister with the result that the province would not be able to get the best man of the party. All the process of election would have to be gone through only to get a second rate man or the party elected as Governor. Being subsidiary in importance to the Prime Minister, he would be the nominee of the Prime Minister or the province. It was not a desirable thing. During the emergency it would be better to have a nominated Governor who was an independent and detached person away from the party politics—nominated by the Centre which would be free from the passions and jealousies of local politics.

Such a person would be able to discharge his duties much better than one who had completely identified himself with one group or the other in the province.

Pandit Nehru supporting the amendment said that he could appreciate certain hesitation on the part of the House to reconsider something that had already been decided. It should be remembered that when this question was brought before the House in July 1947 by Sardar Patel, the House passed it. Nearly two years had passed and these two years had made enormous difference to the Indian scene. "If we seek to reconsider something that was passed two years ago", said Pandit Nehru," it should not appear a strange thing to do, after all that has happened since August 15. We have gained a great deal of experience during the period. It is perfectly open to us to reconsider the matter. In the course of the last year on numerous occasions, the committees of the House reconsidered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. Even those like Sardar Patel who had put forward before the House the proposals the other way about felt that a change was desirable. The reasons for this have been stated before the House and I need not go into them".

PRIME MINISTER'S PLEA

Election Will Encourage Separatist Tendencies

Referring to the proposition before the House, Pandit Nehru said "the more I thought about it the more I feel that this proposal to have nominated Governor in the present context of the Constitution is not only desirable from a practical point of view but also from the democratic point of view." Pleading for the elimination of separatist tendencies in the province, groups etc., Pandit Nehru said: "We have decided that we will not encourage communalism. We will abolish separate electorates, reservation of seats etc. We have still to deal with many other separating factors. We have to deal with the people's mind and heart". He added certain laws, conventions and practices would help or hinder separatist tendencies. He felt that if they had an elected Governor that would to some extent encourage separatist provincial tendencies.

He might be some kind of a rival in that particular majority group which for the moment remained in control of the province.

Pandit Nehru pointed out that there would be tremendous burden of elections to the Central and provincial Legislatures on the administration and it would not be advisable to add yet another election on the list. Pandit Nehru felt it would be better if the Governor is not so intimately connected with local politics of the province and with factions of the province. On the whole it would probably be desirable to have eminent people from outside who would naturally co-operate fully with the Government in carrying out the policy of the Government and yet represent before the public something above politics.

Pandit Nehru argued that an elected Governor would not only invariably be a man of that province but was unlikely to represent the numerous minority groups that existed in the country.

DEMOCRATIC PROCEDURE

He said that the method suggested by the amendment was really a democratic procedure in the sense that it would make the democratic machine work smoothly. Carried to the extreme, elections everywhere might produce conflicts with the result that smooth working may not be possible. All over the world many governmental machines were cracking up for political or economic reasons. There were a few stable democratic machines. It was, therefore, very important for India not to take any step which might lead to loosen the fabric of India, loosen the governmental machine and lead to conflicts. He supported fully the amendment suggesting that the Governor should be nominated by the President.

Message incomplete

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India news cuttings 1-6.

UNION PRESIDENT TO NOMINATE GOVERNORS

Amendment Accepted By India Assembly: Article 131 Passed

(By Our Special Correspondent)

NEW DELHI, Tuesday.—The Constituent Assembly today accepted the proposal that Provincial Governors should be appointed by the President. The debate leading up to the decision had broadened out further than yesterday and attracted supporting speeches from Pandit Nehru, Mr. Munshi, Dr. P. K. Sen, Mr. T. T. Krishnamachari and others.

DECISION ON ELIGIBILITY AND TERM OF OFFICE

Opposition today was also stronger than yesterday and had a trace of bitterness, because of the feeling that the debate was not more prolonged. Mr. Mohammed Saadullah, former Premier of Assam, and Mr. Biswanath Das, former Premier of Orissa, were principal opposition speakers. Mr. Das declared that representatives of Orissa and Orissa States were against nomination.

When the motion was ultimately passed, the cheering was no more than formal, but Mr. B. Das felt that even that was ill-timed. "Why do you cheer?" he exclaimed. "It is a day of mourning."

That seemed a lurid overstatement after the reasons given by Pandit Nehru, Dr. Ambedkar and others in favour of nominated Gov-

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ernor. Pandit Nehru told that separate electorates, reservations, etc., had been abolished in order to eliminate all possible causes which might lead to the growth of separatist tendencies. That object would not, he felt, have been helped if we had an elected Governor. The presence of an elected Governor would weaken the link with the Centre and loosen the fabric of India, for, anyone seeking election in a province would have to be a provincial figure and not a detached person, unconnected with any of the provincial factions.

REAL ISSUE

Dr. Ambedkar defined the exact issue on which the House had to come to a decision. The real issue, he declared, was not nomination or election, because the provincial Governor was not going to be a purely ornamental functionary, and how he came into being was a purely psychological and not substantial point. The real issue before the House was what powers it proposed to give the Governor. If he was to be a constitutional Governor with no more power than the Draft Constitution expressly gave him and no power to interfere in the internal administration of the province, Dr. Ambedkar did not think there was any substantial objection to nominating that Governor.

In coming to a decision on the issue before it therefore the House should not bother whether the Governor was to be nominated or elected. It should be careful and watchful in deciding what powers it was going to give him.

Mr. Saadullah argued that if the Governor and the Chief Minister were both elected and both came from the same party, there would be more harmony between them than if one was elected and the other nominated.

After passing Mr. Brajeswar Prasad's amendment to provide that the Governor be appointed by the President, the House adopted the next six Articles dealing with the term of office, eligibility for re-election, qualifications, and form of oath of the Governor.

NOMINATED GOVERNORS

Few will agree with the reasons given to justify the change in the Draft Constitution in favour of having Governors nominated by the President and not elected as originally proposed. There has been no change in the context of the conditions in the country which makes this change in the Draft Constitution necessary. As a matter of fact, after the proposal to arm the Governors with wider powers than those originally contemplated, it is all the more necessary that the Governors should have electoral sanction in the exercise of their emergency powers. Governors nominated by the President can never have that sanction. Any exercise of arbitrary powers by them may be resented by the people. As for the argument that nomination gives a wider choice inasmuch as certain people like the former rulers of Indian States, who will have little chance to be elected, can be nominated under the new arrangement, it is wholly untenable. An arrangement under which people not acceptable to public opinion can be imposed on them as Governors cannot be called democratic. It has to be recognised that people who cannot face the electorate cannot be made executive heads under any democratic system without doing injury to that system.

The other argument advanced to justify the change in the Draft Constitution, the plea that "in the absence of clear-cut issues based on policies or principles, the election of Governors is bound to be degraded to vulgar levels of personal equation" is no less untenable. Why should there by absence of clear-cut issues based on policies? The very fact that different parties would be backing different candidates will ensure that they will stand for different programmes. If the parties or the candidates, however, prefer to fight on a personal equation basis, it cannot be helped. After all there is no guarantee even in the case of the elections to the legislatures that they will be fought on clear-cut issues. The personal equation danger can be averted by seeing to it that all parties evolve clear-cut programmes and that the issues are squarely put before the people. To seek to avert it by dispensing with the election altogether is to accept a cure which is worse than the disease. To try to by-pass the electorate is to cut at the very root of democracy.

The anxiety in certain quarters to see that all the strings of control remain in the hands of the party dominating the Centre even in case power in one or more provinces passes to the hands of other parties is easily understandable. But such devices as nominated Governors, far from helping to create unity, will only intensify suspicions between the provinces and the Centre in case of use of emergency powers. On the other hand, the other popular provincial leaders can have nothing to say against the use of such powers by a man who has got an electoral mandate as they themselves. The change in favour of nominated Governors carries implications which will alarm all those who think that distrust of the people is never conducive to the health of a democracy.

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The Bombay Chronicle

1-6-49

To find fault is easy, and in every man's power, but to point out the proper remedy is the proof of a wise counsellor.

—DEMOSTHENES.

SELECTING THE GOVERNOR

It was to be expected that the Constituent Assembly would pass by an overwhelming majority the amendment that the Governors of States shall be appointed by the President. The Congress Assembly Party had already approved of this method and the Party has little opposition in the House. We should have preferred the alternative method mentioned in the draft Constitution under which the President was to select one from a panel of four candidates elected by the State Legislature. This would have combined election, in the first instance, of four suitable candidates by a representative and responsible body like the State Legislature with nominaiton by the President. Thus there would have been a fair balance between the interests of the State and the larger interests of the Union. But since the President himself is to be democratically elected and will be advised by the Cabinet which is itself responsible to a democratically elected Legislature, the present arrangement may serve the same purpose with reasonable efficiency. After all, the main thing is that the system should work and only experience will show how it functions. It is an important thing that Mr. B. G. Kher, Bombay's Premier, has warmly commended the new system. Immediately, it will have the effect of strengthening the Centre's control because as the President's nominee, the Governor of a State might be expected to check excessive provincialism and to assert the larger interests of the Union as a whole.

Speakers in the Central Legislature commended the amendment on the plea that an elected Governor and an elected Premier in a State might lead to friction. This is the least of the dangers since their respective functions are well defined in the Constitution. But it is not unlikely that a Governor nominated by the President might find himself at odds with the State Cabinet and care will have to be taken that the wishes of the States are not altogether overlooked in the nomination. Normally, we take it that this will be assured by the President seeking the advice of not only the Union Cabinet but also of the State Prime Minister as the leader of the majority party in the State Legislature. It is true that there is no provision for such consultation in the Constitution but it is not to be expected that everything will be provided for in the Constitution. The very fact that the system of nomination has been substituted, on the initiative of the Congress Party, for election, will naturally have a restraining influence on the President's exercise of his nominating power. It is not fair to say that the nomination system has proved a success in the year and a half that it has been in existence because the circumstances under a permanent Constitution differ vastly from those obtaining in an interim arrangement. The one thing to be regretted in the system that has been adopted is that it is not one of the two methods which were before public opinion but an entirely new one which has not been widely discussed before adoption.

Pandit Jawaharlal Nehru drew attention to one of the very real defects of election when he said that they had still to deal with many separatist factors and that, if they had an elected governor, he might be one of the many groups in a province. It cannot be denied that a man from the Centre can be trusted to be more removed from the differences in a State than a man elected by the people of that State. In Bombay we are not so conscious of the havoc which such divisive influences can cause because on the whole we are fortunate in having in our Prime Minister one who has in abundance the quality of holding different elements together. But the example of Madras where groups and factions have disturbed the peaceful and constitutional progress of the Province should serve as a grim warning of what might happen. Generally speaking, therefore, having regard to the prevailing conditions in the country, the decision to leave the Governor's nomination to the President is a wise one. And when the Union Prime Minister pleads on the ground that the Government is determined to put down all the elements that divide the nation, it is a deciding voice.

The Hindustan Times

WEDNESDAY, JUNE 1, 1949.

PROVINCIAL GOVERNORS

The Constituent Assembly has made another change of fundamental importance in its former decision by adopting an amendment which provides for nomination of provincial Governors by the President of the Republic. This, closely following upon the reversal of the previous decision in regard to reservation of seats for minorities, is also explained mainly by the argument that since the matter was discussed in the July-August session of 1947 the country has been partitioned and much has been learnt from experience. In fact, the main plea of Pandit Nehru in supporting the new proposal favouring nomination of Governors was that the past two years had made "enormous difference to the Indian scene."

As pointed out by Mr K. M. Munshi, the members of Union Powers Committee and of the Provincial Model Constitution Committee when they originally debated the rival merits of the British and the American models decided in favour of adopting the British system of parliamentary self-government, but they also flirted with the American idea of the chief executive being elected by the direct vote of the people. Thus while adopting the system of responsible government as the normal machinery of the constitution, the two committees jointly decided to create as a reserve another popular authority in the shape of the President of the Republic and provincial Governors being elected by the adult population of the country or the unit concerned. The idea behind this scheme was that should party system in India develop, not on the British lines but French, and there be multiplicity of parties, making it difficult to form a stable government, the President or the Governor, as the case might be, could take over the reins of authority, and in doing so he would be acting as the chosen one of the people. Commenting on the scheme we wrote on July 16, 1947 that the proposed arrangement "will provide for a smooth transition to the American system of Presidential executive if in any province responsible government becomes impossible owing to a mutiplicity of parties or other causes." Whatever the merits of the original scheme, its basis was destroyed when it was later decided that the President of the Republic should not be elected by the people but by the members of the Union Parliament. This meant preference for the British system which makes the head of the State a constitutional figurehead and, naturally, a demand arose that the provincial Governors' role must be similarly patterned. But, as suggested by Dr Ambedkar, even larger consequences must follow the adoption of the new proposal. The Governor's powers must be circumscribed by statute to correspond with those of a constitutional head and not of a popular head of the province. We have had occasions recently to emphasize the vital necessity of making such provisions in the constitution as would give greater stability to the provincial governments than is possible under an abstract system of parliamentary democracy. Perhaps, the American method could have been adopted for the provinces while keeping the British system of responsible government for the Centre, but that not having been done, it is rightly felt that by mixing the two, the constitution would give opportunities for rivalry between the Governor and the Premier, each claiming to be a better representative of the people than the other. There was, of course, no support in the C.A. for the alternative proposal that a Governor should be chosen by the President from a panel elected by provincial legislators.

The practical aspect of the problem was effectively brought out by Mr B. G. Kher, Premier of Bombay, and Pandit Nehru. The former pointed out that a Governor nominated by the Centre would help to smoothen administration by making the Opposition appreciate the good in the measures adopted by the Government in power. Dr P. K. Sen reinforcing the argument stated that a Governor could act as a lubricant. But the most impressive argument was advanced by Pandit Nehru when he emphasized that the provision for elected Governors might, to some extent, encourage separatist tendencies because they would generally belong to their own provinces. The Constituent Assembly must not take steps, he said, which might loosen the fabric of India. On the other hand, the person nominated by the President, after ascertaining that he would be acceptable to the provincial government, would fill the role better. Pandit Nehru also mentioned that nomination would provide a better chance for selection as Governors of eminent persons belonging to minority communities. We wish the Prime Minister had not used this argument because it encourages thinking on communal lines which must, hereafter, be avoided at all costs. Nomination to such a high office must be made irrespective of religious labels. Perhaps, one of the underlying causes of opposition to placing too much power in the hands of the Prime Minister was that vast patronage might be wrongly exercised by future incumbents of the high office.

Both Mr T. T. Krishnamachari and Pandit Kunzru, while approving the amendment, gave a warning against the provincial Governors being considered as agents of the Centre. The true constitutional position of the Governor, even though nominated by the President, would be that of a constitutional head of the province. Any emergency powers delegated to him must be of a transitory character to enable the Government to be carried on while the people's representatives are unable to form a stable Government, and the Centre requires time to effectively intervene. But it is important that the Central Government, representing the will of the people of the country as a whole, should be able to act as a court of wards for any particular area while it continues to suffer from political instability. In such a contingency, a Governor who has been nominated by the President after taking the advice of the Prime Minister of India and the Premier of the province concerned would inspire general confidence as the executive head of the Government.

GOVERNORS TO BE APPOINTED FOR FIVE YEARS

(Continued from page 1 column 2)

his party. He had no doubt that the present leaders would never think of resorting to any such practice but he would appeal to the House to look into the future. "If men like Pandit Nehru and Sardar Patel were to be in office continuously, I will have no complaint. But human life is temporary and parties rise and fall. What was done by a Governor under British imperialism may also be done by another party."

NOMINATION SUPPORTED

Smt Durgabai (Madras), supporting the principle of nomination, said that if the Governors were to be "at the mercy of the people," they would not be able to remain above party politics.

Prof Shibban Lal Saksena (U.P.), said that nominated Governors would not have the same prestige as those elected. He favoured election because he felt that the method of nomination had not been a success. Moreover, the Prime Minister was already authorized to choose judges, ambassadors and high officials and it was not advisable to give him still more powers in the choice of Governors. There was no guarantee that future Prime Ministers would be of the same calibre as Pandit Nehru.

Mr K. M. Munshi, explaining the reasons why the Drafting Committee had changed its view, said that originally election was favoured because a strong President at the Centre and Governors in the provinces would be necessary to give stability to the Government in case there was fragmentation of parties. Once it was decided that the President and the Governors should be mere constitutional heads, the question of election was naturally eliminated.

A Governor elected on adult franchise to be at the top of political life in the province would soon prefer to be the Prime Minister or a minister with effective powers. The party in power during the election would naturally put up for governorship a man not as outstanding as the future prime minister with the result that the province would not be able to get the best man. Election would have to be gone through only to get a second-rate man of the party elected as Governor. Being subsidiary in importance to the Prime Minister he would be the nominee of the Prime Minister of the province. It was not a desirable thing.

During the emergency, he added, it would be better to have a Governor nominated by the Centre which would be free from local politics. Such a man would be able to discharge his duties much better than one who had completely identified himself with one group or the other in the province.

PANDIT NEHRU'S SUPPORT

Pandit Nehru supporting the amendment said that he could appreciate hesitation by members to reconsider something that had already been decided. When this question was brought before the House in July 1947, by Sardar Patel, the House passed it. Nearly two years had passed and these two years had made enormous difference.

"If we seek to reconsider something that was passed two years ago", Pandit Nehru said, "it should not appear strange after all that has happened since August 15. We have gained a great deal of experience. It is perfectly open to us to reconsider the matter. During the last year on numerous occasions, the committees of the House reconsidered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. Even those like Sardar Patel felt that a change was desirable".

Referring to the proposition he said: "The more I think about it the more I feel that to have nominated Governors in the present context of the constitution is not only desirable from the practical point of view but also from the democratic point of view."

Pleading for the elimination of separatist tendencies, Pandit Nehru said: "We have decided that we will not encourage communalism. We will abolish separate electorates and reservation of seats. We have still to deal with many other separating factors. We have to deal with the people's mind and heart."

Pandit Nehru pointed out that besides the elections to the Legislature and to the Centre on the basis of adult suffrage, another election on a major scale would mean waste of a tremendous amount of energy and money of the nation which could be diverted to more useful work. It would also undoubtedly encourage "provincial way of thinking and functioning". Obviously the provincial Governor would function in a provincial way.

He said: "Are we going to help them in that tendency and also make the provincial Governor much more of a provincial figure than he need be? I think it will be far better if he is not so intimately connected with local politics and with factions of the province. He should be a more detached figure, acceptable to the province. On the whole it would probably be desirable to have people from outside—eminent in education or other fields of life—who would naturally co-operate fully with the Government in carrying out its policy and yet represent before the public something above politics."

Pandit Nehru argued that an elected Governor would not only invariably be a man of that province but was unlikely to represent the numerous minority groups that existed in the country. "It is obviously desirable that eminent leaders of minorities—for the sake of simplicity I am using that word, we will not use the words 'majority or minority communities' in future—should be appointed. All such groups will have a far better chance through nomination than by election."

He said that the method suggested by the amendment was really a democratic procedure in the sense that it would make the democratic machine work smoothly. Carried to the extreme, elections everywhere might produce conflicts with the result smooth working was not possible. All over the world many Governmental machines were cracking up for political or economic reasons. There were a few stable democratic machines. It was, therefore, important for India not to take any step which might tend to loosen the fabric of India, loosen the Governmental machine and lead to conflicts.

ARGUMENT CONTESTED

Syed Muhammad Saadulla (Assam) contested the argument that election would hamper the smooth working of the administration of a province. He said that the scheme of election was more likely to lead to harmonious working in a province, because the Governor and Prime Minister would belong to the same ruling party. On the other hand, confusion would be created in the administration if the Governor was an appointed one, as he would, under instructions from the Centre, like to run the administration in one way, while the Premier would prefer to run it in a different way. Moreover, an appointed Governor would be a man from another province and would have an "empty mind" about conditions prevailing in the province over which he was to govern.

Mr T. T. Krishnamachari (Madras) said that wisdom lay in accepting the amendment.

Mr V. S. Sarwate (Madhya Bharat) said that one-third of India was made up of States or Unions of States. The House would, therefore, have to take into consideration the Rajpramukhs whose position was analogous to that of Governors. It was argued that unless the Governors were appointed, the Prime Minister of India would not be able to discharge his responsibility of maintaining peace. If he was to discharge his responsibility for maintaining peace in the States also, the House would have to make provisions under which Rajpramukhs would be brought on a level with the Governors as regards their powers.

Mr R. K. Sidhwa, supporting the amendment said that a minority of members, including himself, had favoured nomination all along. He was glad that the "big men", who had earlier voted for election, had ultimately accepted the views of "small men". Those who opposed nomination did not realize that nomination now was not the same thing as it was during British rule. He supported the present policy of the Government not to nominate as Governor of a province a person from the same province.

Mr B. Das (Orissa) said in an interpolation that all provinces possessed men of ability.

Mr Sidhwa replied that while holding the view that it was advisable to appoint as Governor a person from some other province, he agreed that the President should consider the claims of all provinces and not confine the selection to two or three provinces.

A motion for closure was moved and accepted at 10-20 a.m. The clause had been under discussion for four hours.

DR AMBEDKAR'S REPLY

Dr Ambedkar, replying to the debate, said that in coming to its decision, the House need not bother itself with the question whether the Governor was to be nominated or elected. They should bear in mind the question "What are the powers with which the Governor is going to be endowed?" That matter was not before the House today. It would come up at a later stage when Clauses 175 and 188 and probably some other additional clauses were under consideration. The House should be careful and watchful of these new sections. "Today, it seems to me, if the constitution remains in principle the same as we intend it to be, namely, that the Governor should be a purely constitutional Governor, it is quite immaterial whether he is nominated or elected."

Dr Ambedkar said that the Drafting Committee had placed an alternative proposal for nomination out of a panel to be chosen by the Legislature although the House had accepted the principle of election, because the Committee felt that it was not desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a great deal of time, a lot of trouble and a lot of money. It was also felt that the powers of the Governor were so limited, or nominal and so ornamental that probably very few would come forward to stand for election.

It had been said that if the Governor was elected there would be rivalry between him and the Prime Minister, as both would derive their mandate from the people at large. He did not accept that view because the Prime Minister would be elected on the basis of policy and the Governor on the basis of personality. Therefore, he visualized no conflict even if the principle of election was adopted, but the other argument, namely, whether it was necessary to have a purely ornamental functionary elected at so much cost and trouble, remained.

There was no radical difference between the suggestion of the Drafting Committee (nomination out of a panel elected by the Legislature) and Mr Prasad's amendment. Fundamentally it was a question for nomination, from one point of view, he could not help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination, was a better thing than simple nomination. It was a purely psychological question. Who would appeal most to the people, a person nominated or a person in whose nomination the Legislature in some way participated? At the same time, he would warn the House that the real issue before it was not nomination or election but what power it was proposed to give to the Governor. If the Governor had no power of interference in the internal administration of a provincial Ministry, then the question whether he was nominated or elected was wholly immaterial.

Mr Prasad's amendment was adopted.

TERM OF GOVERNOR

The House next considered Dr Ambedkar's substitute Article 132 stipulating that the term of a Governor shall be five years, subject to the provision that a Governor shall hold office during the pleasure of the President and may submit his resignation to the President.

Mr Prasad moved an amendment which said simply: "The Governor shall hold office during the pleasure of the President".

The original Article lays down that the Governor shall hold office for five years and that he can be removed from office for violation of the constitution by impeachment by the Legislative Assembly and the Council of States.

Prof K. T. Shah moved four amendments to the original Article. He wanted that the Governor should, during his term of office, be irremovable unless he was impeached for violation of the constitution, for treason or any offence against the safety, security or integrity of the Union. He further wanted that a Governor may be removed if he is duly certified to be mentally deficient or found guilty of bribery or corruption.

He also wanted a new Article to be added laying down that in the event of the office of the Governor falling vacant at any time the arrangements made for the discharge of the functions of the Governor during such vacancy shall hold good only till the election of another Governor.

Prof Shah said that he was fundamentally opposed to the Governor holding office during the pleasure of the President. When it was decided to nominate the Governor he should not be left entirely at the mercy of the President.

Prof Shibbanlal Saxena opposing Dr Ambedkar's substitute Article said that is would make the Governor a "creature of the President." Dr Ambedkar had not given any reason for this change. Although there was some ground for nomination, he could not see why the Governor should be recalled at the whim of the President. This was not a democratic step. He wanted the proviso relating to impeachment retained.

Mr Loknath Misra (Orissa) said that after the decision that Governors would be nominated it became necessary that subsequent provisions relating to the appointment of Governors should be changed. He agreed with Dr Ambedkar that the President should have the right to recall the Governor but wanted that the Legislative Assembly should also have their right to impeach him for misbehaviour and violation of the constitution this would act as a remedy to the "evil" that might be caused by nomination.

Dr Ambedkar pointed out that power for the removal of a Governor for corruption bribery and violation of the constitution was given to the President in general terms and it might undertake the removal of the Governor.

The House adopted the Article as moved by Dr Ambedkar.

Dr Ambedkar then moved an amendment Article stating the qualifications of a Governor. It stated that no person would be eligible for appointment unless he was a citizen of the Indian Union and had completed 35 years. The House adopted it without discussion, but a brief debate ensued when Article 135, relating to the conditions of a Governor's office, was taken up.

Mr H. V. Kamath objected, through an amendment, to the mention of the official residence of the Governor. He said the constitution was being burdened with needless details.

Mr B. Das criticized high salaries of Governors and Governor-General and said that they must ensure "Congress standard" of life.

Mr Chaudhury opposed Mr Kamath's amendment while Mr Prasad suggested the appointment of one Governor for two or three provinces.

The House adopted the draft Articles with minor amendments by Dr Ambedkar and rejected other amendments.

AMENDMENT REJECTED

The House rejected Prof Shah's amendment seeking to provide retirement allowance for Governors. The Governors on retirement should not be exposed to want or penury or temptation to misuse the influence acquired during their term of office, Prof Shah said.

Dr Punjabrao Deshmukh (C.P.) said that if retirement allowances were paid to Governors, Ambassadors and many other categories of people would ask for the same treatment. If these demands were conceded, a large portion of India's revenues would be "eaten up" by these pensions and allowances

Sardar Hukem Singh (East Punjab) said that Governors, who were to be mere figureheads and ornamental heads, had been given enough "lustre" by being paid a monthly salary of Rs 4,500 in addition to sumptuary allowance, official residence and other facilities. He opposed Prof Shah's amendment.

The House adopted Article 136 (affirmation or oath by the Governor) with an amendment by Mr Krishnamachari providing that the Governor shall take the oath in the presence of the Chief Justice, or the seniormost judge of the High Court, instead of members of the Legislature, as originally intended.

The Assembly accepted Mr Kamath's amendment leaving the option to the Governor to take the oath of office in the name of God, if he so desired. Mr Kamath said: "We will only be true to our heritage and spiritual genius by adopting an amendment of this nature."

Pandit Kunzru said that there might be people in this country who might object to swearing in the name of God. He wanted an assurance that nobody would be compelled to swear in the name of God.

It was pointed out to Pandit Kunzru that under Mr Kamath's amendment, the Governor could either swear in the name of God or make a solemn affirmation without taking God's name.

The House then adjourned.—API.

APPEAL TO EXPEDITE CONSTITUTION

The President of the Constituent Assembly appealed to members on Tuesday to expedite the constitution.

He said: "I have given great latitude to members and I expect reciprocity from their side so that we may get through the constitution as quickly as possible. In some case I have allowed speeches not strictly relevant because I felt that some of the viewpoints might deserve consideration, if not exactly in connexion with a particular Article before the House then in connexion with some other Article which might come up at a later stage. I would ask members to bear in mind that we should not have repetition of arguments."—API

(Continued from page 1 column 2)

his party. He had no doubt that the present leaders would never think of resorting to any such practice but he would appeal to the House to look into the future. "If men like Pandit Nehru and Sardar Patel were to be in office continuously, I will have no complaint. But human life is temporary and parties rise and fall. What was done by a Governor under British imperialism may also be done by another party."

NOMINATION SUPPORTED

Smt Durgabai (Madras), supporting the principle of nomination, said that if the Governors were to be "at the mercy of the people," they would not be able to remain above party politics.

Prof Shibban Lal Saksena (U.P.), said that nominated Governors would not have the same prestige as those elected. He favoured election because he felt that the method of nomination had not been a success. Moreover, the Prime Minister was already authorized to choose judges, ambassadors and high officials and it was not advisable to give him still more powers in the choice of Governors. There was no guarantee that future Prime Ministers would be of the same calibre as Pandit Nehru.

Mr K. M. Munshi, explaining the reasons why the Drafting Committee had changed its view, said that originally election was favoured because a strong President at the Centre and Governors in the provinces would be necessary to give stability to the Government in case there was fragmentation of parties. Once it was decided that the President and the Governors should be mere constitutional heads, the question of election was naturally eliminated.

A Governor elected on adult franchise to be at the top of political life in the province would soon prefer to be the Prime Minister or a minister with effective powers. The party in power during the election would naturally put up for governorship a man not as outstanding as the future prime minister with the result that the province would not be able to get the best man. Election would have to be gone through only to get a second-rate man of the party elected as Governor. Being subsidiary in importance to the Prime Minister he would be the nominee of the Prime Minister of the province. It was not a desirable thing.

During the emergency, he added, it would be better to have a Governor nominated by the Centre which would be free from local politics. Such a man would be able to discharge his duties much better than one who had completely identified himself with one group or the other in the province.

PANDIT NEHRU'S SUPPORT

Pandit Nehru supporting the amendment said that he could appreciate hesitation by members to reconsider something that had already been decided. When this question was brought before the House in July 1947, by Sardar Patel, the House passed it. Nearly two years had passed and these two years had made enormous difference.

"If we seek to reconsider something that was passed two years ago", Pandit Nehru said, "it should not appear strange after all that has happened since August 15. We have gained a great deal of experience. It is perfectly open to us to reconsider the matter. During the last year on numerous occasions, the committees of the House reconsidered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. Even those like Sardar Patel felt that a change was desirable".

Referring to the proposition he said: "The more I think about it the more I feel that to have nominated Governors in the present context of the constitution is not only desirable from the practical point of view but also from the democratic point of view."

Pleading for the elimination of separatist tendencies, Pandit Nehru said: "We have decided that we will not encourage communalism. We will abolish separate electorates and reservation of seats. We have still to deal with many other separating factors. We have to deal with the people's mind and heart."

Pandit Nehru pointed out that besides the elections to the Legislature and to the Centre on the basis of adult suffrage, another election on a major scale would mean waste of a tremendous amount of energy and money of the nation which could be diverted to more useful work. It would also undoubtedly encourage "provincial way of thinking and functioning". Obviously the provincial Governor would function in a provincial way.

He said: "Are we going to help them in that tendency and also make the provincial Governor much more of a provincial figure than he need be? I think it will be far better if he is not so intimately connected with local politics and with factions of the province. He should be a more detached figure, acceptable to the province. On the whole it would probably be desirable to have people from outside—eminent in education or other fields of life—who would naturally co-operate fully with the Government in carrying out its policy and yet represent before the public something above politics."

Pandit Nehru argued that an elected Governor would not only invariably be a man of that province but was unlikely to represent the numerous minority groups that existed in the country. "It is obviously desirable that eminent leaders of minorities—for the sake of simplicity I am using that word, we will not use the words 'majority or minority communities in future—should be appointed. All such groups will have a far better chance through nomination than by election."

He said that the method sugested by the amendment was really a democratic procedure in the sense that it would make the democratic machine work smoothly. Carried to the extreme, elections everywhere might produce conflicts with the result smooth working was not possible. All over the world many Governmental machines were cracking up for political or economic reasons. There were a few stable democratic machines. It was, therefore, important for India not to take any step which might tend to loosen the fabric of India, loosen the Governmental machine and lead to conflicts.

ARGUMENT CONTESTED

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The Assembly accepted Mr Kamath's amendment leaving the option to the Governor to take the oath of office in the name of God, if he so desired. Mr Kamath said: "We will only be true to our heritage and spiritual genius by adopting an amendment of this nature."

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It was pointed out to Pandit Kunzru that under Mr Kamath's amendment, the Governor could either swear in the name of God or make a solemn affirmation without taking God's name.

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GOVERNORS T NOMINATED

FORMER DECISION REVISED

PANDIT NEHRU SUPPORTS AMENDMENT

FIVE-YEAR TENURE OF OFFICE

The Constituent Assembly on Tuesday passed by an overwhelming majority Mr Brajeshwar Prasad's amendment that Governors of States should be appointed by the President. Under the new Constitution provinces will be known as States.

THE House adopted an Article prescribing a five-year tenure of office for a Governor, subject to the provision that he would hold office during the pleasure of the President. An amendment by Prof K. T. Shah seeking to provide retirement allowances for Governors was rejected.

The Assembly also adopted an amendment moved by Mr H. V. Kamath giving Governors the option to take the oath of office in the name of God, if they so desired. It was made clear that taking of God's name would not be compulsory.

Dr P. K. Sen (Bihar), supporting Mr Prasad's amendment said that an elected Governor would not serve the best interests of Parliamentary democracy.

The function of a Governor was not to create confusion but really to "lubricate the machinery of Government, to see that all the wheels are going well by reason not of his interference but of his friendly intervention." Such a Governor could be secured not by election but by the method of nomination by the President on the advice of the Prime Minister.

Mr Biswanath Das, former Premier of Orissa, who had given notice of an amendment in favour of election of the Governor by the State Legislature, said the method of nomination would not work properly. Acceptance of Mr Prasad's amendment would mean that while the provincial cabinet would be elected democratically, the Governor was to be chosen autocratically. "You cannot have democracy and autocracy working together."

Mr Das said that while he was serving as Premier of Orissa under the former regime the Governor had all along been attempting to smash

(Continued on page 7 column 1)

SELECTION OF GOVERNORS

ASSEMBLY DECISION

NOMINATION BY PRESIDENT

PANDIT NEHRU SUPPORTS PROPOSAL

NEW DELHI. May 31.

The Prime Minister, Pandit Jawaharlal Nehru, who participated in the debate said that in the present context of the constitution, the proposal to have nominated Governors was preferable not only from the democratic point of view but also from the practical point of view. He felt that the method of election of Governors might, to some extent, encourage separatist tendencies in the provinces.

The House adopted an article prescribing a five-year tenure of office for the Governor of a State, subject to the provision that he would hold office during the pleasure of the President. An amendment by Prof. K. T. Shah, seeking to provide retirement allowances to Governors, was rejected.

The Assembly adopted an amendment moved by Mr. H. V. Kamath which sought to leave the option to the Governor to take the oath of office in the name of God if he so desired.

The Constituent Assembly today passed by an overwhelming majority Mr. Brajeshwar Prasad's amendment that the Governors of States shall be appointed by the President. Under the new constitution provinces will be known as States.

When the debate on the article relating to the appointment of Governors was resumed today Dr. P. K. Sen (Bihar), supported Mr. Brajeshwar Prasad's amendment to the effect that the Governor of a State shall be appointed by the President. He expressed the view that an elected Governor would not serve the best interests of Parliamentary democracy.

"When the whole of the executive power is vested in the Council of Ministers" he said, "it there is another person who believes that he has got the backing of the province behind him and, therefore, he can at his discretion, come forward and intervene in the governance of the province, it would really amount to surrender of democracy". The function of a Governor was not to create confusion or chaos. It was really to "lubricate the machinery of Government, to see that all the wheels are going well by reason of his interference" but not by his friendly intervention". Such a Governor could be secured not by election, but by the method of nomination by the President on the advice of the Prime Minister.

Mr. Biswanath Das, former Premier of Orissa, who had given notice of an amendment in favour of election of the Governor by the State legislature, declared that he had decided to abide by the joint wisdom of his party (Congress) and of the House. But, he wished to say in his duty, he said, if he did not express his feeling that the method of nomination would not work properly. Acceptance of Mr. Prasad's amendment would mean that while the Provincial Cabinet would be elected democratically, the Governor was to be chosen autocratically. "You cannot have democracy and autocracy working hand functioning together," said Mr. Das. "You are going to have autocracy right from the top to the neck and autocracy at the head. Even a village panchayat is asked to choose its own President. Why should we deny the same right to the State legislature?" he asked.

Mr. Das said that while he was serving as Premier of Orissa under the former regime, the Governor had all along been attempting to smash the Ministry. He had no doubt that the present leaders of the country would never think of resorting to any such practice, but he would appeal to the House to look to the future. "If men like Pandit Nehru and Sardar Patel were to be in office continuously I would have absolutely no misgivings. But human life is temporary, and parties rise and fall. You may have different parties in power at the Centre and in the provinces. What was done by a Governor under British Imperialism may also be done by another party".

Mr. Das regretted that the previous decision of the House in regard to election was not going to be altered. Constant change had been "the fame and reputation of the members of the House". It was unfair to the members who had absolutely no experience of the Constitution probably that no changes in the Constitution would be moved.

President Rajendra Prasad: "No member should take anything for granted. It is his duty to be here when the Assembly is sitting".

PANEL SYSTEM NOT SATISFACTORY

Srimati Durgabai (Madras), supporting the principle of nomination, said that if the Governor were to be "at the mercy of the people", he would not be able to remain above party politics. The panel system had been tried by the Universities and had not given satisfaction. Every appointment had resulted in disappointment to the other candidates and the defeated candidates of the panel a lot of trouble for the Vice-Chancellor. Therefore she did not favour the panel system as an alternative to election.

Prof. Shibbanlal Saxena (United Provinces) said that nomination by the Governor would not have the same prestige as elected Governors. He favoured election because he felt that the real opinion of the nation had not been a success. Moreover, the Prime Minister was already authorised to choose Judges, Ambassadors and high officials, and it was not advisable to give him still more power in the choice of a Governor. There was no guarantee that future Prime Ministers would be of the same calibre as Pandit Nehru.

Mr. K. M. Munshi, explaining the reasons why the Drafting Committee had changed its view on the subject, said that originally the process of election had favoured because a large number of the Centre and Governors in the Provinces, would be necessary to give stability to the Government in the days there was fragmentation of political parties. Once it was decided that the President and the Governors should be mere constitutional heads, the question of election naturally eliminated.

Governor, elected on adult franchise to be at the top of political life in the province, would soon get into it. The Prime Minister or a Minister, with effective power. The party in power in the election would naturally put up for Governorship a person who was not as outstanding as the Prime Minister, with the result that the province would not be able to get the best man of the party. All the process of election would have to be gone through only to get a second-rate man of the party elected as Governor. Being subsidiary in importance to the Prime Minister, he would be the nominee of the Prime Minister of the Province, which was not desirable.

During an emergency, it would be better to have a nominated Governor who was an independent and detached person, away from party politics, nominated by the Centre which would be free from the passions and jealousies of local politics. Such a person would be able to discharge his duties much better than one who had completely identified himself with one group or the other in the Province.

PANDIT NEHRU WELCOMES AMENDMENT

Pandit Jawaharlal Nehru, supporting the amendment, said that he could appreciate a certain hesitation on the part of the House to reconsider something that had already been decided. It should be remembered that when the question was brought before the House in July 1947, by Sardar Patel, the House passed it. Nearly two years had passed and these two years had made an enormous difference in the Indian scene.

"If we seek to reconsider something that was passed two years ago," said Pandit Nehru "it should not appear a strange thing to do after all that has

(Continued on page 8)

SELECTION OF GOVERNORS

(Continued from page 4)

happened since August 15. We have gained a great deal of experience during the period. It is perfectly open to us to reconsider the matter.

"In the course of the last year, on numerous occasions, committees of the House reconsidered this and other matters, not necessarily with a view to changing them, but with a view to co-ordinating them. Even those who, like Sardar Patel, had put forward before the House the proposals for the other way about, felt that a change was desirable. The reasons for this have been stated before the House and I need not go into them".

Referring to the proposition before the House, Pandit Nehru said: "The more I thought about it the more I feel that this proposal to have nominated Governors in the present context of the constitution is not only desirable from a practical point of view, but, from the democratic point of view, worthwhile also.

Pleading for the elimination of separatist tendencies, Pandit Nehru said: "We have decided that we will not encourage communalism and that we will abolish separate electorates, reservation of seats, etc. We have still to deal with many other separatist forces. We have to deal with the people's mind and heart." He hoped certain laws, conventions and practices would help or hinder separatist tendencies. He felt that if there had been elected Governor that would to some extent encourage separatist provincial tendencies rather than otherwise. The Governor would be the nominee of the Government of that particular province. He might be even the head of a rival in that particular majority group which for the moment remained in control of the province.

ROLE OF GOVERNOR

Pandit Nehru pointed out that apart from the tremendous burden of elections to the Central and Provincial legislatures on the basis of adult suffrage, to add yet another election on a major scale would mean waste of a tremendous amount of energy and attention of the nation which could be diverted to more worthwhile projects. Apart from this, it would undoubtedly encourage the narrow provincial way of thinking and functioning" in each province. Obviously, the Provincial Governor would function in a provincial way.

Pandit Nehru asked the House: "Are we going to help them in that tendency and also make the Provincial Governor much more of a provincial figure than he is now? I think it would be far better if he is not so intimately connected with local politics or with anyone and with sections of the province. He should be a more detached figure, acceptable to the province—wherever he may go or function—and yet may not be a part of the party machine of the province. In the whole it would probably be desirable to have people from outside, eminent in something—education or other fields—who would naturally co-operate fully with the Government in carrying out the policy of the Government and yet would not be drawn into the petty politics

State Govt-B-29

DUTIES & FUNCTIONS OF GOVERNORS

ASSEMBLY MEMBERS DIFFER AGAIN

20 ARTICLES PASSED IN ONE DAY

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Thursday.—Conflicting views on the duties and functions of provincial Governors under the new constitution were again expressed in the Constituent Assembly this morning during a long debate on Article 147.

UNDER this provision the Chief Minister is required to communicate to the Governor all Cabinet decisions of importance, to supply him with such information as he requires and to submit to the Cabinet for its reconsideration a decision taken by a Minister, if the Governor so desires.

Several members, including a former Orissa Premier, Mr Biswanath Das, and Mr Rohini Kumar Choudhury, who was a Minister in Assam some years ago, opposed the Article on the ground that it invested the Governor with powers which would bring him into conflict with the Ministry.

Critics of the proposal were particularly severe in their comments because they said that, in view of the provision adopted earlier this week to nominate Governors, it would be improper to curtail the authority and independence of popular Ministries.

Speaking as a member of the Drafting Committee, Mr K. M. Munshi expressed the view that the Governor was far from a "cypher" under the new constitution, but that he had definite functions which were not confined to entertaining State guests.

OPINION MODIFIED

This opinion was modified by the President of the Drafting Committee, Dr B. R. Ambedkar, who explained that while the Governor had no functions, he had certain duties, which included the responsibility to ensure that the administration remained impartial and pure.

Although the Governor was bound to accept the advice of his Ministry, he was nevertheless free to suggest reconsideration of certain decisions, which he could not do unless information in regard to the conduct of administrative business was made available to him.

After passing Article 147 without change, the House, which had already adopted Article 146 rapidly got through another 18 Articles, bringing the day's total to 20, which is a record for a single sitting this session.

Most of the provisions adopted today were a repetition for the provincial Legislatures of proposals already accepted for the two Houses of the Legislature at the Centre.

(Agency report on page 5.)

Indian News Chronicle

FRIDAY, JUNE 3, 1949.

GOVERNORS AND MINISTRIES

The debate in the Constituent Assembly on the Governors' powers and the relationship between them and their Ministries has brought out certain apprehensions. Though the relevant articles have been passed, it should be possible—the House has Dr. Ambedkar's promise that it would be—to define the Governors discretionary powers more precisely and to have no doubt in any one's mind that these extraordinary powers would be used only in the gravest emergency when no stable Ministry having the confidence of the legislature can be formed or when there is such threat to law and order that normal democratic processes cannot cope with it. What is more, their use has to be limited to a clearly defined period—the minimum period needed to hold a general election in the State (as the province will be known under the new Constitution) concerned. A certain confusion was created by the earlier pleas of official sponsors of the proposal to have nominated Governors that the latter would be mere figure-heads and did not, therefore, require any direct electoral mandate. These pleas were turned against them by the critics of the proposal to vest discretionary powers in them. Naturally, the sponsors of these official changes could not justify nomination of Governors on the ground that they were to be mere constitutional heads and immediately afterwards seek discretionary powers for them. All this confusion could have been avoided if these sponsors had at the very beginning told the House what was at the back of their minds as they were later compelled to do. The matter was crisply put by Dr. Ambedkar in reply to a critic who had asked why the Governors were armed with discretionary powers when no such powers were considered necessary in the case of the President. "We want to invest the Governors with discretionary powers," he explained, "because the Provincial Governments are required to work in subordination to the Central Government." These powers will be there to help the Governors to see to it that "they do act in subordination to the Central Government." If this explanation—and not the one of Governors being mere figure-heads—had been given earlier, it would not only have explained their discretionary powers but also the proposal for their nomination by the Centre.

This does not, however, dispose of entirely the question of the relationship between the nominated Governors and the popular Ministries under the new Constitution. The anxiety of the authors of the Draft Constitution to provide against contingencies in which there are serious conflicts between the States (Provinces) and the Centre is easily understood. It will not, however, be prudent for any one to get away with the idea that the safeguard of the discretionary powers vested in the Governors would prove effective in resolving such conflicts. The emergency powers, it has to be realised, can at best help only in tiding over a short period of emergency, in ensuring that any conflict between the States and the Centre does not disrupt the administration. But ultimately the conflict has to be resolved on the political plane, by evolving a healthy democratic convention by which the discretionary powers are never misused, on the plea of emergency, to interfere even indirectly in the field in which the State Ministries should have the final say. It may scandalise the authors of the Draft Constitution or the sponsors of the official changes in that draft that any one should entertain even the slightest apprehension about the likelihood of the misuse of these powers. But they have only to visualise a position in which a party in opposition at the Centre may be in power in one or more of the States and when the temptation for the party in power at the Centre to use its nominees in such States to weaken the influence of the party in power in those States may be strong. It may be, as some of the critics of the proposal for the nomination of Governors readily conceded, that the men in power at the Centre now will be able to resist such temptation. But can resistance to such temptation be taken for granted in the case of any party that happens to be in power at the Centre? That is why there is need for healthy democratic conventions which will not only keep in check conflicts between the Centre and the units but also see to it that the relations between the Executive Heads of the States and the popular Ministries are always harmonious.

Amrita Bazar Patrika

PROVINCIAL GOVERNOR

ARTICLE 131 of the Draft Constitution provides that the Governor of a State (i.e. Province) "shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State". Some of the members of the Drafting Committee considered that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in the administration. So an alternative method was suggested by the Committee:

> The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State . . . in accordance with the system of proportional representation by means of the single transferable vote . . .

Commenting on this Article we wrote under the caption "The Draft Constitution" in September last: "The first method is obviously unsatisfactory; the co-existence of two persons deriving authority directly from the people is not likely to promote co-operation and harmony. Even the second method is not without serious defects. If the President appoints the candidate who secures the largest number of votes, he will be a little more than the nominee of the Premier, for the Premier will command the majority of votes in the Legislature. If, on the other hand, the President's choice falls upon any of the other three candidates, he may be accused of partisanship. In our view the Governor should be appointed by the President on the advice of the Prime Minister of the Union. This will keep the Governor isolated from party politics in the State and ensure that neutrality and independence which are essential for the proper discharge of his duties."

We are glad to find that our suggestion has commended itself to the Constituent Assembly. Mr. Brajeshwar Prasad's amendment provides for the nomination of the Governor by the President under his hand and seal. Under Article 61(1) the Council of Ministers with the Prime Minister at the head will "aid and advise the President in the exercise of his functions". Thus, in nominating the Governor the President will be guided by the advice of the Council of Ministers Convention may delegate the right to tender advice on this point solely to the Prime Minister. Mr. Alladi Krishnaswami Ayyar said that "the President . . . would necessarily act on the advice of the Prime Minister". "He had no doubt" moreover, "that in the normal working of the Constitution a convention would grow by which the Government of India would consult the Provincial Cabinet while appointing the Governor". We think the satisfactory working of the system of nomination will depend largely on the growth of these two conventions.

Mr. Alladi Krishnaswami Ayyar, who is a member of the Drafting Committee, said that "the Governor was merely the constitutional head of the Province, the real executive power being vested in the Ministry". But the position is not so simple. Look at Article 143 of the Draft Constitution:

> (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, *except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*
>
> (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final . . .

Thus, the Governor shall have certain discretionary powers which he shall exercise without the "aid and advice" of the Council of Ministers. Under Article 153 he shall summon, prorogue and dissolve the Legislative Assembly in his discretion. Under Article 188 his duties "in cases of grave emergencies" shall be performed in his discretion. Referring to the Drafting Committee's recommendations on the Governor's discretionary powers Professor D. N. Banerjee says in *The Draft Constitution of India*:

> It is incompatible with the parliamentary form of Government as it has developed in England, and may lead to a friction between the Governor and his Chief Minister, and a consequent weakness in administration.

The Government of India Act, 1935, conferred discretionary powers on the Governor, but under Section 54(1) of that Act those powers were subject to the superintendence, direction and control of the Governor-General. But, as Professor Banerjee points out, there is no corresponding provision in the Draft Constitution. Thus, Article 143 makes the Governor absolutely irresponsible so far as the exercise of discretionary powers is concerned. He is not responsible to the Legislature or to the electorate; he is not responsible even to the President who nominates him. A democratic Constitution should have no place for a Governor who is an autocrat within a limited sphere. We hope the Constituent Assembly will omit the words "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" in Article 143 and omit all other references to the Governor's "discretion" in the Draft Constitution.

The Hindustan Times

THURSDAY, JUNE 2, 1949.

PROVINCIAL GOVERNORS

The Constituent Assembly has made another change of fundamental importance in its former decision by adopting an amendment which provides for nomination of provincial Governors by the President of the Republic. This, closely following upon the reversal of the previous decision in regard to reservation of seats for minorities, is also explained mainly by the argument that since the matter was discussed in the July-August session of 1947 the country has been partitioned and much has been learnt from experience. In fact, the main plea of Pandit Nehru in supporting the new proposal favouring nomination of Governors was that the past two years had made "enormous difference to the Indian scene."

... pointed out by Mr K. M. Munshi, the members of Union Powers Committee and of the Provincial Model Constitution Committee when they originally debated the rival merits of the British and the American models decided in favour of adopting the British system of parliamentary self-government, but they also flirted with the American idea of the chief executive being elected by the direct vote of the people. Thus while adopting the system of responsible government as the normal machinery of the constitution, the two committees jointly decided to create as a reserve another popular authority in the shape of the President of the Republic and provincial Governors being elected by the adult population of the country or the unit concerned. The idea behind this scheme was that should party system in India develop, not on the British lines but French, and there be multiplicity of parties, making it difficult to form a stable government, the President or the Governor, as the case might be, could take over the reins of authority, and in doing so he would be acting as the chosen one of the people. Commenting on the scheme we wrote on July 16, 1947 that the proposed arrangement "will provide for a smooth transition to the American system of Presidential executive if in any province responsible government becomes impossible owing to a mutiplicity of parties or other causes." Whatever the merits of the original scheme, its basis was destroyed when it was later decided that the President of the Republic should not be elected by the people but by the members of the Union Parliament. This meant, preference for the British system which makes the head of the State a constitutional figurehead and, naturally, a demand arose that the provincial Governors' role must be similarly patterned. But, as suggested by Dr Ambedkar, even larger consequences must follow the adoption of the new proposal. The Governor's powers must be circumscribed by statute to correspond with those of a constitutional head and not of a popular head of the province. We have had occasions recently to emphasize the vital necessity of making such provisions in the constitution as would give greater stability to the provincial governments than is possible under an abstract system of parliamentary democracy. Perhaps, the American method could have been adopted for the provinces while keeping the British system of responsible government for the Centre, but that not having been done, it is rightly felt that by mixing the two, the constitution would give opportunities for rivalry between the Governor and the Premier, each claiming to be a better representative of the people than the other. There was, of course, no support in the C.A. for the alternative proposal that a Governor should be chosen by the President from a panel elected by provincial legislators.

The practical aspect of the problem was effectively brought out by Mr B. G. Kher, Premier of Bombay, and Pandit Nehru. The former pointed out that a Governor nominated by the Centre would help to smoothen administration by making the Opposition appreciate the good in the measures adopted by the Government in power. Dr P. K. Sen reinforcing the argument stated that a Governor could act as a lubricant. But the most impressive argument was advanced by Pandit Nehru when he emphasized that the provision for elected Governors might, to some extent, encourage separatist tendencies because they would generally belong to their own provinces. The Constituent Assembly must not take steps, he said, which might loosen the fabric of India. On the other hand, the person nominated by the President, after ascertaining that he would be acceptable to the provincial government, would fill the role better. Pandit Nehru also mentioned that nomination would provide a better chance for selection as Governors of eminent persons belonging to minority communities. We wish the Prime Minister had not used this argument because it encourages thinking on communal lines which must, hereafter, be avoided at all costs. Nomination to such a high office must be made irrespective of religious labels. Perhaps, one of the underlying causes of opposition to placing too much power in the hands of the Prime Minister was that vast patronage might be wrongly exercised by future incumbents of the high office.

Both Mr T. T. Krishnamachari and Pandit Kunzru, while approving the amendment, gave a warning against the provincial Governors being considered as agents of the Centre. The true constitutional position of the Governor, even though nominated by the President, would be that of a constitutional head of the province. Any emergency powers delegated to him must be of a transitory character to enable the Government to be carried on while the people's representatives are unable to form a stable Government, and the Centre requires time to effectively intervene. But it is important that the Central Government, representing the will of the people of the country as a whole, should be able to act as a court of wards for any particular area while it continues to suffer from political instability. In such a contingency, a Governor who has been nominated by the President after taking the advice of the Prime Minister of India and the Premier of the province concerned would inspire general confidence as the executive head of the Government.

ASSEMBLY DEBATE ON GOVERNORS

(Continued From Page 5 Col. 5.)

nors support on account of their long association with him.

Prof. Sribhanlal Saksena moved an amendment that a Minister should be a member of the Legislative Assembly and not the "Legislature." If the word "Legislature" was retained, he said, a Minister who could not be elected to the Lower House might retain his post by being nominated as a member of the Upper House.

MAINTAINING PURITY

"Ministers Should Disclose Private Interests"

Mr. Kamath moved an amendment whose object, he said, was to maintain "purity in the administration." According to his amendment, every Minister, including the Chief Ministers will e required both before entering upon his office and at the time of quitting his office to make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry. The Legislature may deal with the matter in such manner as it may deem appropriate.

GOVERNORS' PROPERTIES

Prof. K. T. Shah moved an amendment on similar lines. He wanted Governors also to declare their interests. Further, Prof. Shah sought to provide that during his term of office, the properties of a Governor or Minister should be held in trust by the Reserve Bank of India. Citing Britain's case, he said that before assuming the premiership, Mr. Baldwin had dissociated himself from his iron and steel firm. Prof. Shah hoped that such examples would be followed in India as well.

When Dr. Deshmukh wanted the amount of Rs. 25 lakhs now paid by Berar to the Nizam to be stopped and spent for education in that province, Dr. Rajendra Prasad pointed out that it had nothing to do with the subject under discussion.

(Message incomplete)

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and a half per cent. of the first year's premium, and two per cent. of each renewal premium, payable on the policy, or (c) in any other case, 35 per cent. of the first year's premium, 7-1-2 per cent. of the second and third year's renewal premium, and thereafter five per cent. of each renewal premium, payable on the policy.

In a case referred to in clause (c) an insurer during the first 10 years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, 40 per cent. of the first year's premium payable on the policy. Corresponding figures in the case of special agents are (1) (a) one half per cent. of the premium, (b) 15 per cent. of the first year's premium payable on the policy or (c) 25 per cent. of the first year's premium payable on the policy. During the first 10 years of his business, in a case referred to in clause (c), a figure of 17-1-2 per cent. is allowed.

LIMITATION OF EXPENSES

Important provisions have been made in respect of limitation of expenses of management (life business). In terms of these clauses, every insurer will have to furnish to the Controller-General statements certified by an actuary of the bases of premium currently used by him in regard to new business in respect of mortality, rate of interest expenses and bonus loading, similar statements in respect of all premia received by him.

After December 31, 1949, no insurer shall in respect of the life insurance business transacted by him in India spend as expenses of management in any calendar year an amount in excess of the provision for expenses of management contained in the premia received by him in that year as is based on the statements or the certificate specified. (An exception has been provided).

LICENSING OF AGENTS

The draft Bill also contains a clause limiting expenses of management in insurance business other than life. After March 31, 1949, no insurer shall in respect of any class of insurance business transacted by him in India other than life insurance business, spend in any calendar year as expenses of management, including commission or remuneration for procuring business, an amount in excess of the limits fixed by the General Insurance Council under sub-section (1) of section 64(1b). (An exception has been provided).

Conditions for licensing chief agents and special agents and regulation of the employment of these agents are also contained in the draft Bill. Government would also be armed with powers to appoint an administrator for management of insurance business in special circumstances.

INSURANCE COUNCILS

After providing for the incorporation of the Insurance Association of India, the draft Bill says that there shall be two councils of the Insurance Association of India known as the Life Insurance Council and the General Insurance Council for discharging the functions assigned to them respectively under Part 2(a). The constitution and functions of the Councils have been specified. In specific cases, the Councils will have powers to control expenses.

After the commencement of the new Act no person shall begin to carry on any business specified in sub-section (1) of section 65, and no provident society carrying on any business in the provinces shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is a public company or a society registered under the Co-operative Societies Act or similar law in force or a body corporate incorporated under the law of any country or State outside the provinces of India.

The draft Bill contains several amendments to the old Act.

THE LEADER

FRIDAY, JUNE 3, 1949.

And just as no community in India need have any fear of Swaraj being monopolized by any other, even so the English should have no fear. Swaraj would be real Swaraj only when there would be no occasion for safeguarding any such rights.—MAHATMA GANDHI.

APPOINTMENT OF GOVERNORS

The Constituent Assembly's decision of Tuesday last that the governors of states should be nominated by the President of the Union has settled one of the most controversial questions that have confronted that house. The decision the Constituent Assembly arrived at two years ago was different. The Assembly decided then that governors should be elected by direct vote of the adult section of the population. The Drafting Committee of the Assembly suggested an alternative. It suggested that the governor should be appointed by the President from a panel of four candidates elected by the members of the legislature of the state. We approve of the decision the Constituent Assembly reached on Tuesday. Pt. Hirdaynath Kunzru took the opportunity to mention in his speech on Monday that two years ago he was 'one of the few' unfortunate men in this house 'who tried to persuade it not to 'resort to the system of election 'of governors.' We may as well draw attention to the fact that we are also among those few, though we do not consider ourselves unfortunate for that reason, who have been opposed to the election of governors. The opinion of the *Leader* has been that 'even the panel system (proposed by the Drafting Committee) should be done 'away with and the power of 'nominating governors should be 'vested in the President.' We are glad that the suggestion has been approved by the Constituent Assembly.

Mr. Bishwanath Das, former Premier of Orissa, regretted that the previous decision of the house in favour of election was now sought to be altered. There is no cause for regret. It is always wise to rectify a mistake. Moreover, it should be borne in mind that conditions in the country have changed enormously since July 1947 when the question was first discussed. Then the emphasis, as Mr. H. V. Kamath pointed out, was on the federal aspect of the constitution, while today the emphasis is on the union pattern. Mr. Shibbanlal Saxena said that nominated governors would not have the same prestige as elected governors. The prestige of a governor depends more on his character and ability than on anything else. The Premier of the North-West Frontier Province is an elected member of the Frontier Assembly. But his prestige is nil. Dr. Katju, the Governor of West Bengal, is a nominee of the Governor-General. But he is held in esteem not only in India but also in America, Britain and other foreign countries by people who have come in contact with him. Mr. Saxena contended that the method of nomination had not been a success. Mr. Saxena is wrong. As far as the appointment of governors is concerned, the Nehru Government has invariably chosen the right person for the right place.

Syed Mahomed Saadullah expressed the opinion that the nomination of governors went against the spirit of the constitution and that there would be confusion in the administration as the governor would under instructions from the centre like to run the administration in one way while the premier of the province would prefer to run it in a different way. We fail to see how the nomination of governors by the President will mitigate against the spirit of the constitution. It is not one of the principles of the constitution that all posts in the Union should be elective. The governor will be the constitutional head of the province. There is therefore no fear of the governor pursuing a policy different from that of the premier of the state. The system of nominated governors has worked well in the dominions. There is no reason why it should not work well in India too. There will be danger of conflict between governors and premiers if governors are elected, because in that case there will two rival claimants to authority derived directly from the electorate. The Assembly's decision that governors should be nominated by the President has averted that danger. We welcome the decision.

Indian news chronicle 2-6.

GOVERNORS EMPOWERED TO GRANT PARDON

India Assembly Disposes Of Six Articles In 15 Minutes

NEW DELHI, Wednesday.—The Constituent Assembly today disposed of six Articles within 15 minutes. All of them related to the office of a Governor.

The House agreed that the Governor of a State shall have power to grant pardon, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence of any person convicted under the State laws. It adopted a substitute Article, moved by Mr. T. T. Krishnamachari, providing that the executive power in each State shall extend to matters with respect to which the legislature in the State has power to make laws. It also passed an amendment, moved by Mr. Brajeshwar Prasad (Bihar), authorising the President to make provision for the discharge of the functions of a Governor in an unforeseen contingency.

In view of the decision of the House in favour of nomination of Governors, it dropped an Article prescribing procedure for impeachment of Governors.

The House then proceeded to consideration of the Articles relating to the Council of Ministers. Article 143 lays down that "there shall be a Council of Ministers with the Chief Minister as the head, to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion".

Mr. H. V. Kamath moved an amendment seeking deletion of words "except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion."

Mr. Kamath said that from the reading of the Article it appeared that it had been copied from the Government of India Act without any mature thought. It would be wrong in principle and contrary to the tenets of constitutional Government, that was being built up in the country, to invest Governors with discretionary powers. He thought no departure from constitutional Government should be made except in cases of emergency.

Prof. K. T. Shah moved an amendment seeking to make the Chief Ministers of provinces alone responsible for advising the Governors instead of the Council of Ministers as provided for in the original Article. Mr. Shah said he would like the responsibility for advising Governors to be vested in the Chief Minister as individual Ministers were not in the same position. The responsibility for advising the Governor in the appointment and removal of Ministers would be that of the Chief Minister and it was in the fitness of things that he should be made directly responsible under the Constitution to tender advice to the Governor.

AMENDMENT OPPOSED

Mr. T. T. Krishnamachari opposing Mr. Kamath's amendment, said he did not find any harm in the provision regarding discretion of the Governor. Actually it was by way of a safeguard because there were provisions in the Constitution later under which Governors were empowered to act on their discretion in certain matters. It was open for the House to remove the discretionary powers of the Governor when the Articles dealing with it specifically were dealt with. If it was decided that the discretionary powers of the Governors should not remain, then the provision in the Article would automatically fall into disuse, he added.

CABINET MEETINGS

'Governors Should Preside'

Dr. Panjabrao Deshmukh (C. P.) said if the Governor was to have discretionary powers, it was necessary that this clause should remain, but he would like to ask Dr. Ambedkar whether it was not necessary to provide for the Governors' presiding over the Council of Ministers, otherwise Ministers might exclude Governors from their meetings. He would like the Drafting Committee to make an amendment to provide for Governors' presiding over meetings of the Cabinets.

Mr. Brajeshwar Prasad (Bihar) felt that Governors should be vested with special responsibilities as under the British Rule in India. There was dearth of leadership in the provinces and competent men were not available. Vesting of Governors with discretionary powers might be undemocratic, but principles of democracy should not be allowed to endanger efficient administration of the country, he declared.

Pandit Kunzru said it would be better for the House to accept the amendment moved by Mr. Kamath for deletion of the words referring to the discretionary powers of the Governor. The words, he added, were reminiscent of the Government of India Act and the old order.

Mr. Krishnamachari had assured that Article 143 could be reconsidered when later Articles or discretionary powers were considered. In spite of that assurance, said Pandit Kunzru, retention of the words which Mr. Kamath's amendment sought to delete would psychologically create the impression that the House was being asked by the Drafting Committee to commit itself to a principle which it might find undesirable to accept later.

If Article 143 was passed in its present form, it might also give rise to misapprehensions of the kind under which Mr. Deshmukh seemed to be labouring and which made him ask for provision for Governors' presiding over Cabinet meetings.

Prof. Shibbanlal Saxena said that if the words relating to the discretionary powers of the Governor were retained in the Article, this would be a reminder of a "humiliating past" and he thought such a provision was out of place in the Constitution now being framed.

Mr. Mahabir Tyagi opposing the amendment of Mr. Kamath said that under the Constitution the Governor was nominated to act as the agent of the Centre in order to see that the Central policy was implemented and the States were kept together. The previous conception of provincial autonomy had changed altogether and nothing should be done which would encourage the States to keep themselves aloof from the policy evolved by the Centre.

Mr. Balchandra Mahashewar Gupta (Poona) said that the House must see whenever power was given to the Governor, that his position as the constitutional head was not compromised.

ALLADI'S VIEWPOINT

"Revision Of Article Open To House"

Mr. Alladi Krishnaswami Ayyar argued that there seemed to be no difference of opinion in the House in regard to the general principle of ministerial responsibility laid down in the Article that the Governor in the various spheres of executive activities should act on the advice of the Ministers, excepting insofar as under the Constitution he was required to function in his discretion. So long as there were Articles in the Constitution which enabled the Governor to act in his discretion and in certain circumstances he might override the Cabinet, the Article, as it was framed, was perfectly in order. If later the House came to the conclusion that those Articles relating to discretion were not necessary, it would be open to the House to revise this article, he said.

Pandit Thakurdas Bhargava opposing the amendment of Mr. Kamath maintained that it was wrong to say that the Governor could be a dummy or an automaton. The Governor would exercise wide powers. The Ministers would be appointed or dismissed by him. He could call the leader of the majority party to choose the Ministry who would advise him in the discharge of the above functions when the Ministries were not there asked. Besides these, he had to act in his discretion during emergency. So long as the Governor exercised very important functions it was quite necessary to retain the words.

Mr. Hari Vinayak Patashkar (Bombay), supporting Mr. Kamath, said that the question should be looked at from a different point of view as the article related to the functions of the Ministers and not to the powers of the Governor. Even granting that discretionary powers for the Governor were necessary and provided for in the Constitution, it was obnoxious to keep those words concerning the discretionary powers in the present article, which dealt with the powers of the Ministers. The proviso would act as an unwarranted and impolite reminder to the Chief Minister that he should not advise the Governor in matters relating to Governor's discretion.

Mr. Krishnachandra Sharma (U.P.) said that discretionary powers for the Governor were necessary for the maintenance of good Government and, therefore, the mention of such powers in the present article was equally necessary.

Mr. Rohini Kumar Choudhury (Assam) said that the House accepted the proposal of nomination of Governors because Dr. Ambedkar had assured the House that the Governor would be a symbol and figurehead. He asked whether the King of England had powers of discretion. Even in the matter of selecting his bride he was guided by the advice of the Prime Minister of England. The provinces of Assam and Sind knew what it meant to invest the Governors with discretionary powers. In the former case the Premier was selected from the minority party and, in the latter, the late Mr. Allah Baksh was dismissed.

"CLOSE IMITATION"

No one in this country would countenance the idea of giving powers to the constitutional head to act in his discretion, he declared. The best that could be said in favour of the Article was that it was a close imitation of the similar provision of the Government of India Act which the members of the House held not fit enough to be touched with a pair of tongs.

AMBEDKAR'S REPLY

"No Negation Of Responsible Government"

Dr. Ambedkar, replying to the debate, said that the main and crucial question was whether the Governor should have discretionary powers or not. When this question was decided, only then, would the question whether the words used in the last part of the Article should be retained here or somewhere else. It had been said in the course of the debate that the retention of discretionary powers in the Governor was contrary to the spirit of responsible Government in the province. It was also said that it smelt of the Government of India Act which in the main was undemocratic."

"I have no doubt in my mind," remarked Dr. Ambedkar, "that the retention of certain discretionary powers for the Governor is in no sense contradictory to or a negation of responsible Government. I do not want to labour on the point because on this point I could well satisfy the House by referring to the provisions in the Constitution of Canada and Australia. I do not think anybody in this House can dispute that the Canadian system of Government is not a fully responsible Government," he asserted.

To Pandit Kunzru's suggestion that the Constitution was drafted in the 19th century, Dr. Ambedkar replied that this did not matter. The Canadians and Australians had not thought it necessary to delete the provisions. They were well satisfied that the retention of those provisions was fully compatible with responsible Government. They did not think that these principles were an infringement on responsible Government.

So far as procedure was concerned, he had satisfied the House that the existence of the provisions vesting a certain amount of discretionary powers in the Governor, was not incompatible with the principle of responsible Government.

Since the retention of the clause was necessary and desirable the only question that arose was how should the House provide for it. It was a mere method of drafting. There was no question of substance or principle involved. If he could know at this stage what provisions the Assembly would make in regard to discretion, he could specify them in this article, he declared.

Mr. Kamath asked why the President was not invested with discretionary powers vis-a-vis the Central Government, when the Governors were invested with such powers.

ARTICLE ADOPTED

Dr. Ambedkar replied: "We do not want to invest the President with any discretionary power. We do want to invest the Governor with such powers. The provincial Governments are required to work in subordination to the Central Government. In order to see that they do act in subordination to the Central Government, the Governors will reserve certain powers and see that the rules under which the provincial Governments are supposed to act, according to the constitution, in subordination to the Central Government, are observed."

The House rejected the amendments of Mr. Kamath and Prof. K. T. Shah and adopted the Article without amendment.

ARTICLE 144

"Chief Minister To Be Appointed By Governor"

Dr. Ambedkar moved Article 144, as amended by him, to provide that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The Ministers shall hold office during the pleasure of the Governor. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and Backward Classes or any other work.

The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of the period cease to be a Minister. In the choice of his Ministers and in the exercise of his other functions under the Constitution, the Governor shall be generally guided by the instructions set out in the fourth schedule of the Constitution, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.

The salaries and allowances of Ministers may from time to time be determined by the legislature of the State.

ASSEMBLY'S CONFIDENCE

Mr. Mohammed Tahir (Bihar) moved an amendment to the effect that the Ministers shall hold office only so long as they enjoyed the confidence of the Legislative Assembly and not during the pleasure of the Governor. In certain cases, he added, Ministers might have lost the confidence of the Legislature but might continue to enjoy the Gover-

(Continued On Page 8 Col.)

Hindustan Standard
2-6.

GOVERNOR'S POWERS

ACCEPTING the amendment moved by Sri Brojeswar Prasad the Constituent Assembly on Tuesday reversed its earlier decision to have elected Governors in the Provinces (to be known as States) of republican India. The Governors in the States, therefore, will be appointed by the Union President himself who will not even be required to limit his choice to a panel of names submitted by the Provincial (State) Legislature. The latter suggestion was embodied in the alternative version of Article 131 of the Draft Constitution; but the Constituent Assembly has taken the decision to turn it down also. Thus Governors would be nominees of the President of the Union on the analogy of the Canadian practice of having nominated Governors in the Provinces.

The Constituent Assembly decided in favour of the method of nomination for filling up the office of the Governor in the Provinces because that would be more in keeping with his status as a constitutional head. It was argued by the supporters of Sri Brojeswar Prasad's amendment that unlike the Governors in British India, their prototypes in republican India would not be clothed with real powers and as such there would be hardly any justification for resorting to election for filling up their office. That would mean only waste of time and energy and the raising of unnecessary controversies which are invariably associated with all elections. As Sri Alladi Krishnaswami Ayyar put it, if the Governor was to function as the constitutional head the expenses involved and the elaborate machinery of election was out of all proportion to the powers vested in the office.

What would be the powers of the future Governors? It seems that most of the members of the Consembly take the view that the phrase 'constitutional head' is sufficiently expressive and adequately conveys the idea that limited powers are vested in the office. But does it so really? Ours is a written constitution and the actual powers will depend not on one's notion of them but on the provisions of the constitution committed to black and white. Mere insistence that our Governors are constitutional heads will not make them so. Their powers must be so defined in the Constitution as to make them the ornamental figure-heads we intend them to be.

Dr. Ambedkar has rightly observed that the real issue before the House was not the choice between election and nomination. Election or nomination, he added, was a psychological issue; the real issue before the House was what powers they proposed to give to the Governor. When the intention of the Consembly evidently is to make the Governor a purely constitutional head, he must not possess more than formal powers. He must not have any power to interfere with the administration nor should be in a position to resist the will of the Ministry which in a parliamentary democracy function as the real executive.

The Governor today is unquestionably a titular chief. The relevant sections in the Government of India Act 1935 vesting extraordinary powers in him have all been deleted and he cannot act against the advice of his Ministers which he is constitutionally bound to accept. But can the same be said about the Governors of republican India if the powers vested in him be permitted to stand? The Governors, as things now stand, will possess a large plenitude of power which will be hardly consistent with their status as ornamental figure-heads.

Reference was made to Articles 175 and 188 by Pandit Kunzru and Dr. Ambedkar, which, it has been suggested, should be suitably modified in order to bring the powers of a Governor in line with his status as a constitutional head. Article 143 (1) is also relevant in this connection as also the second para of the Fourth Schedule to the Draft Constitution which outlines the Instructions to Governors. It is not perhaps widely known that the Draft Constitution proposes to give to the Governors certain discretionary powers which they are permitted to exercise on their own and the Ministers would have no constitutional right to be consulted on such matters. The Governors do not possess such powers at present. Would it be proper to add to their powers when the new Constitution would get going?

Consistency demands that discretionary powers of Governors should be taken away by suitable modification of the relevant Articles and they should be left with just nominal powers necessary for the discharge of their duties as constitutional heads. To invest a nominated Governor with real powers which may bring him in conflict with the real executive would be inconsistent and undesirable. The logical corollary of the decision to choose Governors through nomination would be to take away from them all emergency and discretionary powers which the Draft Constitution has vested in them.

Bombay chronicle 2-6-49

END OF PROVINCIAL AUTONOMY

In speaking on the discretionary powers of the governor, Dr. B. R. Ambedkar, Law Minister in the Union Government, made a significant observation. "Provincial Government," he said "are required to work in subordination to the Central Government." This statement made with characteristic candour removes the sugar coating with which the change-over in emphasis is commonly made. Subordination to the Centre is obviously incompatible with provincial autonomy, and so we might take it that one phase of Indian political life is ended. The trend has been for some time in this direction but it has not attracted much attention. The States, after surrendering three subjects, soon passed over in accepting the Centre's authority. The Provinces have not been tackled yet and it has even been represented that conditions such as prevail in West Bengal and East Punjab cannot be corrected by the Government of India taking over the administration because the autonomy of the provinces must be respected. But now the fact has been openly revealed. Since the Governor is nominated by the President and therefore, derives his authority from that source, it might be taken that his "discretion" means nothing more than the President's direction. The Governor's discretion never was meant to be a right to act in complete independence and without any responsibility to anyone. The inclusion of a clause giving the President authority to take over the function of the Governor removes the least shadow of doubt about the place of the Centre in the proposed Constitution. The objection raised by some members to the discretionary powers of the Governor is feeble and forced. The danger that it might remind some of the provisions of the 1935 Constitution and the days of bureaucratic rule is remote. What in the old days was resented was not the powers of the Governors and Governor-General but the way in which they were made responsible and under the control of a Secretary of State who was in London. Now that the centre of power and authority is New Delhi, there is no point in complaining about governors being directly responsible to that authority.

As a matter of fact, the Governor's discretionary powers are intended only for an emergency, only when the constitution has virtually collapsed in a State. It is a necessity that there should be some way of dealing with this condition because in the absence of such provision there can be nothing but prolonged chaos. The passing of the clause which requires the Governor to act on the advice of his Chief Minister and his council of Ministers "except in the exercise of his discretionary powers," no doubt, only indirectly brings in the question of "discretionary powers". But evidently the objectors desired the Governor to act in all circumstances on the advice of his Ministers. The difficulty in this lies in the fact that a provincial or state crisis must necessarily arise only when the Governor is not able to consult his Ministers. The only corrective to a provincial evil must come from the Centre and this has been affirmed.

THE HINDU

THURSDAY, JUNE 2, 1949.

APPOINTMENT OF GOVERNORS

In deciding that the Governors of States shall be nominated by the President of the Indian Union the Constituent Assembly has resiled from its original position in two stages. The decision is nevertheless to be welcomed because it will make on the one hand for harmony between the Centre and the Provinces in the day-to-day working and on the other it will act as a necessary check on separatist tendencies. When the matter was first considered in the latter half of 1947 the election of the Governor by the entire population of the State on the basis of adult franchise was favoured. We set out at the time the serious objections to the proposal. It would involve, we said, not only a huge waste of time and money but also the distinct possibility that only men belonging to the dominant political party would have any chance of being elected; and we pointed out that even then frequent and serious friction might arise between the Governor and his Cabinet since the former having been elected in his own right, might be tempted to overstep the bounds of his authority. Even more serious in our view was the fact that a popularly elected Governor might not easily fit in with a scheme under which he is expected to exercise his discretionary powers in conformity with the wishes of the Federal Government, which would no doubt be conveyed through the President's directions.

At a later stage the Drafting Committee, evidently bearing such considerations in mind, suggested as an alternative to election selection by the President from a panel of four candidates to be elected by the Legislature of the State. This was an improvement on the original proposal; but there has been considerable difference of opinion as to whether simple nomination by the President is or is not to be preferred to the Drafting Committee's alternative which Dr. Ambedkar, who seemed personally to favour it, called qualified nomination. Any mode of appointment to a post of great honour in which the Legislature has been associated might, abstractly regarded, seem better than nomination by one man, even if that be the President of the Union. But, actually under the decision which the Constituent Assembly has now finally taken, the choice of Governor would be made not by the President off his own bat but under the advice of the popular Union Cabinet. The choice would therefore be no less representative than if it had been made by the President in consultation with the Legislature of the State concerned. On the other hand, if the power to nominate the panel were to be given to the State Legislature it would not be easy to avoid a number of difficulties. Local sentiment would almost invariably favour local men and no outsider however distinguished would have any chance of being elected Governor; and this might be a very serious deprivation from the point of view of the State itself. Again, election by the Legislature would inevitably be on the basis of political division, and that would be a serious handicap to a Governor under the new dispensation in which he is expected to rise above the party strife. In so far as the President of the Union comes into the matter, he would find it difficult to avoid criticism; for whomsoever he may select out of the panel, the disappointed candidates and their supporters would still blame him.

It is just possible that even under the system of simple nomination the political party in power at the Centre might nominate its own partymen for the Governorships. But if the practice of seasoned democracies and our own experience in India since August 1947 is any guide, there is little danger of partymen being favoured for these offices irrespective of considerations of personal worth. The Governor in the new Constitution will not have much power, but he will have very definite responsibilities which will call for the exercise of patience and tact and which would be made easier if he had a personal authority which would commend his word to all men of goodwill. Normally it is the Provincial Cabinet that will be responsible for the administration, and the Governor in relation to it will be simply the constitutional head. But the States themselves, as Sir Ivor Jennings pointed out in a series of special articles we published, will not be "sovereign States" in the American sense: "The State Governments will not be entirely independent entities, for the Government of India may give such directions to a State Government as may be necessary" to effect a number of purposes for which provision is made in the Constitution. The Governor is the medium through which this control would be exercised; and as the agent of the Central Government he might occasionally have to differ from his own Ministry. A certain unwillingness on the part of Dr. Ambedkar and other spokesmen espousing the official view-point to admit this frankly was responsible for the insistence on the part of many members in the Constituent Assembly that the Constitution should drop all reference to the Governor's discretionary powers. Dr. Ambedkar, defending the need for retaining these powers, contended that that would in no way be contrary to or infringe Responsible Government. That is as it may be. But the fact is not in question that the Governor will have to carry out orders of the Central Government which might be strongly opposed by the State Ministries; the Government of India can ensure that this is done only if the Governor is under their discipline and control. At the same time it will be his main business to see that such differences are not allowed to come to the boil. Lacking political power, he should be able to persuade by his reasonableness, sagacity and disinterestedness. And he must be something more than a party hack if he is to inspire confidence not only within the State but also in the mind of the outside public. Being in a special sense a guardian of minority interests, he should be, as Mr. Nehru has well said, a man whom they could look up to as a friend. All things considered it is best to leave the choice of Governor to the Centre, though as one speaker pointed out, a healthy convention should grow in time by which the State Ministry concerned would be consulted.

GOVERNOR'S RELATIONSH CABINETDEFINED

The Constituent Assembly on Thursday passed nearly 20 Articles. After a further debate on the Governor's powers, the House agreed that the Chief Minister of each State should communicate to the Governor all decisions of the Council of Ministers, relating to the State administration and proposals for legislation and furnish such information on these subjects as the Governor may call for.

If the Governor so requires, the Chief Minister will have to submit for consideration of the Council of Ministers any matter on which a decision has been taken by a Minister, but which has not been considered by the Council.

The Constituent Assembly adopted Article 146, laying down that all executive action of the Government of a State shall be expressed to be taken in the name of a Governor, and that orders and instruments executed in the name of a Governor shall not be called in question on the ground that it is not made or executed by the Governor himself.

The House rejected an amendment by Prof K. T. Shah, wanting substitution of the words "the Government of the State concerned" for the word "Governor" in the Article.

Prof Shah's contention was that it was inappropriate to attach such personal importance to the Governor who was after all a temporary head of a State, holding office for a few years. To have all executive matters done in the name of the Governor seemed to him to be utterly incongruous with the democratic Government that was being established.

Dr Ambedkar, the Law Minister, explained that Article 146 was only a logical sequence of Article 130, which said that all executive power of the State should be vested in the Governor.

RECONSIDERATION

The House then proceeded to consider Article 147 which lays down that it shall be the duty of the Chief Minister of each State to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the State, and furnish information relating to legislation which the Governor may call for.

Under the Article, the Governor will have the power to submit for reconsideration of the Council of Ministers any matter on which a decision had been taken by a Minister and which had not been considered by the Council.

Mr H. V. Kamath said he was opposed to the Article and wanted it to be either deleted or recast. Redrafting of the Article was necessary in view of the decision to have appointed Governors.

Dr Panjabrao Deshmukh, opposing Mr Kamath's amendment, said that every order issued by the Cabinet, or by Ministers individually, would be published and proclaimed in the name of the Governor. No Governor would like to question day-to-day orders passed by the Council of Ministers on ordinary affairs. He would only consider orders which would have important repercussions. Even then there was nothing in the Article giving powers to overrule the decisions of the Cabinet.

Mr B. Das supported Mr Kamath's amendment and wanted the Drafting Committee to re-examine the clause, in view of the fact that Governors were going to be nominated.

Mr B. M. Gupta, supporting Mr Kamath's amendment asked whether it was necessary to clothe constitutional Governors with the powers given to them under the Article.

Mr R. K. Sidhwa sought for clarification of sub-clauses I and II of the Article, which made it obligatory on the part of the Chief Minister to submit to the Governor all information, although "the latter was claimed to be a figurehead". He, however, urged for the retention of the provision that, if the Governor so required, the Chief Minister should submit to the whole Cabinet for consideration any decision taken by a Minister and not considered by the Cabinet as a whole.

Mr Bishwanath Das wanted to know what powers and responsibilities the Drafting Committee intended to invest the Governor with. The Assembly had a right to know the background of this Article.

Mr K. M. Munshi argued that under the constitution the Governor was not a "cypher" as some members had suggested. The Governor had political functions to perform as the constitutional head, and it was wrong to say that the Governor had no functions at all.

The constitutional head had to play the important rôle of an adviser. The Governor would be able to bring about harmony in regard to certain policies that might be initiated by the party in power. He could advise, but ultimately he had to accept the advice of the Cabinet.

Mr Rohini Kumar Choudhury considered the Article "a blot" on the whole constitution and felt that it was an unwarranted provision which would lead to friction in the provincial administration.

DR AMBEDKAR'S REPLY

In a detailed reply, Dr Ambedkar expressed considerable surprise at "the excited debate" that had taken place on Article 147 which was an exact reproduction of Article 65, giving the President the same power. He thought that the debate that took place when Article 65 was before the House should have sufficed for the purpose of Article 147.

Several members of the House seemed to think that there was something behind the Article which would affect the position of the Ministers and the Cabinet in the provinces in jeopardising the constitution.

"The Governor under the constitution, has no functions which he can discharge by himself", said Dr Ambedkar. "While he has no functions, he has certain duties to perform. The Article does not confer upon the Governor any power to override the Ministry in any particular matter.

"Even under the Article, the Governor is bound to accept the advice of the Ministers. Therefore, the criticism that the Article somewhat enables the Governor to interfere with or upset the decision of the Cabinet is entirely misconceived."

The Article was adopted.

The House adopted Article 151, which, as amended by Dr Ambedkar, says that the Legislative Assemblies of States shall continue for five years, unless dissolved earlier. The Legislative Council of a State shall not be subject to dissolution, but one-third of its members shall retire every second year.

The House accepted an amendment moved by Mr B. M. Gupta, stating that, while a proclamation of emergency is in operation, the five-year term of the Assembly may be extended by Parliament for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

Prof K. T. Shah described the eventually unifying German under a democratic Government linked politically and economically with the West.

The Western German State will, is hoped, be run internally in such a way as to cast an increasingly strong spell on the less fortunate brethren of the Eastern zone, but its strength as an instrument for the unification of Germany depends largely on its retaining a foothold in the capital of the Reich.

CO-ORDINATING AUTHORITY

If then the question arises of setting up a four-Power co-ordinating body for the Western and Eastern Germanys the Western Powers will probably insist that its seat be in Berlin. The primary question with which this body could deal might be, it has been thought, the fixing of exchange rates. A co-ordinating body might also be authorized to take measures to increase the inter-flow of trade and commerce and to create the maximum freedom of movement between the two zones. That would involve presumably clear arrangements which have not existed in the past for communications and transport to Berlin.

Finally—this is to discourage crystallization of the political system in the Eastern zone—the co-ordinating authority might be instructed to arrange for maximum exchange of Press and other information. Foreign trade is a reserved subject under the Bonn constitution so that the Western Powers could be parties to the four-Power co-ordinating authority with these functions without impinging upon the powers of the Western German Government. Its activities would tend to promote the unity at which the Western Powers and Western Germans aim.

Obviously, however, the agreement to set up a co-ordinating authority for the zones still leaves the difficult questions of politics, currency and right of access to be settled for Berlin.

M Vyshinsky had not talked himself out on the Western Powers' proposals for the unity of Germany when the Council adjourned yesterday. The fact that the Russian programme is a better one for Germans than that of the Western Powers is one that calls for a great volume of resourceful advocacy. It was remarked by many observers that his speeches to date had been consistent with neither the Warsaw Declaration of June 1948, to which the Russian Government was party, nor with the manifesto just adopted by the so-called People's Congress of the Eastern zone which declares for a "Provisional Central Government".—All-India and Burma rights reserved.

ALLEGED RAIDS BY ARABS INTO ISRAEL

Exclusive from The Times, London

JUNE 1.—Reports are published here, says the Tel Aviv correspondent of The Times, that raids by Arab bands from beyond the Israeli frontier are increasing. Their sources are for the most part questionable, but public and Government reaction has been both heated and strong, and already certain newspapers and political parties are querying the effectiveness of the present frontiers drawn up during the recent armistice negotiations.

Most reports credit the Arab raiders with daring and cunning which were not always evident during the recent fighting, and a few darkly hint that they are organized and led by officers of the Arab Legion. Some are said to have penetrated within a few kilometres of Tel Aviv, and are accused of cattle-stealing and even murder.

As yet there is no evidence to substantiate these reports, which often emanate from official sources, but it is obvious that smuggling is being carried on extensively with the active co-operation of Jewish Israelis. Nazareth, which still has a large Arab population, is said be its centre, and the Druze community, which is scattered in the villages to the south is believed to be participating.

Smuggling is of course inevitable when a country with what is probably the world's highest cost of living is bordered by countries where goods can be obtained at normal prices, but there can be no doubt that the present Israeli frontier will be a constant source of irritation and trouble, while there is no peace between Israeli and Arab.

Based as it is upon military lines which would have been untenable had it not been for the truce and adjusted for political reasons, it is for the most part indefensible. Only in the north and south-east where the tide of Israeli victory swept as far as the old Palestinian frontier does it coincide with natural barriers.

In the centre between Jenin and Jerusalem the frontier is still only a few kilometres from the Tel Aviv-Haifa road. Here it follows no contour except in the Tulkarm area where the Arabs hold high ground. It is here where the alleged raiding bands are supposed to cross and where the attention of those elements dissatisfied with the present frontier is centring.—All-India and Burma rights reserved.

WOOMERA ROCKET RANGE LAUNCHING PLATFORMS

ADELAIDE, June 2.—The launching platform of the Woomera rocket range, Central Australia, will be completed within a few days and trial launchings will then be held, said Senator John Armstrong, Australia's Minister for supply and development, today.—PTI-Reuter.

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INDIA TO BECOME REPUBLIC ON JANUARY 26

(By Our Special Correspondent)

NEW DELHI, Tuesday.— India will become a Republic on Independence Day, January 26, 1950. This date has been tentatively adopted by the Congress Party for the inauguration of the new constitution. The Constituent Assembly's time-table is to be fitted into this programme.

Tentative Decision By Congress Party

Accordingly, the idea of a small recess this month in order to give a brief respite to members who are unable to stand the heat has been given up, and working at the present pace, the Assembly is expected to complete the clause by clause consideration of the draft constitution by the end of July. From that date up to the end of September the Drafting Committee will have time to make final adjustments in the form of the Articles in the light of the discussion now in progress.

The Assembly will then hold a final one-day session, so that the formal adoption of the Constitution may synchronise with Gandhiji's birthday, October 2. On that day the House will adopt the impressive Preamble: "We, the people of India, having solemnly resolved to Constitute India into a sovereign Republic, and to secure to all its citizens justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity of the Nation; in our Constituent Assembly this second day of October 1949, do hereby adopt, enact and give to ourselves this Constitution."

Between October 2 this year and January 26, 1950, adjustments will be made in existing laws and other preparations will be completed to enable India to embark on her career as a Republic.

Appointment Of High Court Judges: India Assembly Adopts Eight Articles

(By Our Special Correspondent)

NEW DELHI, Tuesday.— The Constituent Assembly today adopted eight Articles concerning the appointment and conditions of office of High Court Judges in the future States of India.

The House deleted provisions made by the Drafting Committee for the appointment of temporary or additional Judges and in their place substituted articles laying down that when the office of Chief Justice of a High Court is vacant or when any Chief Justice is unable to perform the duties of his office, those duties shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose, and the Chief Justice may at any time with the previous consent of the President request a retired Judge of the Court to act as a Judge provided that the Judge so requested shall be under no compulsion to accept the invitation.

NO IMPORT BY BACK-DOOR

Dr. Ambedkar explaining the purpose of this provision said it was not the intention to import by the back-door for any length of time persons who had retired from the High Court. He stressed the necessity for the proviso and said that without it, it would be quite open to the authorities to impose a penalty upon a Judge who refused to accept an invitation. As regards the salary, etc., of the retired Judge appointed under this Article, this was a matter which would be governed by rules with regard to pensions, etc. In making these appointments, the Chief Justice would be required to obtain the previous consent of the President in order to prevent the possibility of the Chief Justice abusing the right by regularly appointing a friend of his more than once.

Other Articles passed today provide that Judges will hold office until they attain the age of 60, should have had at least ten years experience as a Judge or as an advocate, and can be removed from office by the President after an address presented for this purpose by both Houses of Parliament.

Hindu · 8.6.49.

NEW CONSTITUTION OF INDIA

TO BE ADOPTED ON OCTOBER 2

PROCLAMATION LIKELY ON INDEPENDENCE DAY

NEW DELHI, June 7.

India's Republican constitution is expected to be proclaimed on Independence Day, January 26, 1950, according to a tentative programme outlined at this evening's meeting of the Congress Party in the Constituent Assembly, it is learnt.

The Constitution itself is expected to be passed on October 2, 1949—Mahatma Gandhi's birthday.

Clause-by-clause consideration of the Constitution is expected to conclude sometime in July or in August, after which the Articles will have to be rearranged in proper form and inconsistencies, if any, carefully weeded out before the Constitution is passed in the final form.

An even more difficult task, which will have to be accomplished before the proclamation of the new Constitution is to study how far the existing laws and regulations have to be changed to fit in with the provisions of the new Constitution.

It is learnt, that at to-day's Party meeting, opinion was against adjournment of the Assembly during the clause by clause consideration stage. Members who favoured adjournment on account of Delhi heat found themselves hopelessly outnumbered.—API.

India at Press 12.6.49

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The Constituent Assembly has dealt with the courts of the future. The powers and position of the Supreme Court and the High Courts have been defined in the constitution which provides for continuity and gives the courts as high a place as in the Anglo-Saxon countries. It is not only the retirement age for Judges that has excited comment. The power to deal with all questions of interpretation has been assigned to the Supreme Court which will hear civil and criminal appeals on presentation of certificate for appeal. The Constituent Assembly has also prescribed a plan for financial control and indicated its preference for absolute authority even when a Consolidated fund renders certain items non-votable.

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Nation 8-6-49

96

AGE LIMIT OF HIGH COURT JUDGES

Debate In Consembly

NEW DELHI, June 7.

The Constituent Assembly to-day adopted some of the controversial Articles relating to High Courts in the States.

The Assembly fixed the retiring age of a High Court Judge at 60 years and prohibited him from practising or acting in any court in the country. It also decided against appointing additional judges to cope with temporary increase in work, unless the previous consent of the President was obtained thereof.

Another interesting Article which the House debated today sought to make it obligatory on the part of High Courts to withdraw cases involving substantial question of law necessitating interpretation of the constitution from Lower Courts to itself for trial.

Altogether eight Articles were passed today. The Articles related to appointment and conditions of the office of a Judge of a High Court, application of certain provisions relating to Supreme Court to High Courts, declaration by Judges before entering office, prohibition of practising in courts by retired Judges, attendance of retired Judges at sittings of High Courts in certain cases, jurisdiction of the existing High Courts, power of High Courts to issue certain writs.

When the Constituent Assembly met this morning to resume discussion on the articles relating to conditions of office of High Court judges considerable differences of opinion prevailed on the question of retiring age of a Judge.

Another important question whether the state legislature should have a say in the removal of judges of that state was raised by Mr. H. V. Kamath.

Mr. K. C. Sharma's amendment sought that every Chief Judge of a High Court should be appointed by the President in consultation with the Chief Justice of India, and in the case of appointment of a judge other than the Chief Judge, the Chief Judge of the high court of the state, and should hold office until he attained the age of 60 years

Prof. Shibbonlal Saxena by his amendment aimed to delegate the power of appointment of high court judges to the Chief Justice of India instead of the President.

Mr T. T. Krishnamachari moved an amendment seeking to fix the retiring age of a high court judge at 60 years. His amendment sought to delete the option given to the state legislature to extend the nature of office upto 65 years of age.

He admitted that even after 60 some people were found exceptionally fit to discharge their duties to the state. But, he added, these were exceptions. He, therefore, thought it necessary to fix the retiring age at 60 years instead of leaving the matter to state legislature to decide. If after 10 or 15 years conditions of living improved then the constitution might be amended, raising the retiring age. At present, he thought, the age of 60 was adequate.

RESIGNATION

Prof. Shibbonlal Saxena by another amendment suggested that the judge of a high court should send his resignation to the Chief Justice of India and not to the Governor as provided in the constitution. He said there was no sense in sending resignation to the Governor. It should be either President or the Chief Justice of India. If resignation was to be sent to the Governor it was derogatory to the dignity of the judiciary.

REMOVAL

Mr. H. V. Kamath's amendment to sub-clause (b) of Clause (1) of the article sought that the state legislature should play an important role in the removal of a judge of the high court of that state. The sub-clause provided that a judge of a high court of a state might be removed by the President in the same manner as it was provided for the removal of the judge of the Supreme Court i.e., the President, after an address presented to him by both the Houses of Parliament supported by not less than two-thirds of the members present, might remove the judge concerned.

If the sub-clause were passed as it stood, he felt that the legislature of the state would have no voice in the removal of a judge of the state concerned. The crux of the matter was: should the Parliament be the sole authority for the removal of a judge or should they give some power to the state legislature in this matter. It might be argued that the Parliament was superior body and more competent. But, he said, both the Parliament and the state legislature were elected by the people. If they put trust in Parliament could they not put trust in the state legislature as well.

Dr. Ambedkar moved 6 amendments to the article in order to remove the distinction between the high courts in states and provinces.

Mr. Mohd. Tahir moved 2 amendments aiming to place pleaders in the category of advocates so that pleaders also could be appointed as high court judges like the advocates.

Dr. Punjabrao. Deshmukh did not favour the procedure as regards appointment of high court judges by the President. He would personally prefer, appointments to be made by President in consultation with both the Governor and the Premier of the state concerned. He supported Mr. Kamath's suggestion regarding removal of judges. He said if this provision was retained the state legislature had no function to perform so far as high court judges were concerned except fixing of salary, etc.

As regards Mr. Tahir's amendment he said if a pleader was efficient, he could be easily enrolled as advocates and after a few years might be appointed as high court judge. He did not agree that pleaders should be put on the same level as advocates.

RETAINING THE DRAFT

Dr. Bakshi Tek Chand opposed Mr. Kamath's amendment and said that the provision contained in the draft constitution was a proper one. This was a very important thing. High Court judges should be removed in a very impartial manner and by persons who were not swayed by local prejudices and who could take a detached view of the matter. In provinces where the number of members in the legislature is small and sharp division exists members were likely to be swayed by local prejudices and other considerations. It was for this reason that the Drafting Committee provided that the matter should be left to Parliament. Members of Parliament would be far away from the local scene and would not be prejudiced by local matters.

Mr. Prabhu Dayal Himmatsinkha also opposed the amendment of Mr. Kamath and said that the amendment, if accepted, would make removal of high court judges easier, than provided in the constitution.

RETIREMENT & EFFICIENCY

Dr. P. K. Sen raised a number of points and asked the House to consider them before they decided to fix the retiring age at 60 years. He personally, was strongly in favour of raising it higher even to 62 years. He pointed out that the questions of salary, pension as also the question whether a judge would be permitted to practise after retirement, were the factors which should be examined. If he was debarred from practising, if he was not given liberal pension, if he knew he had to depend on his own resources after retirement without any opening anywhere, an eminent lawyer would be reluctant to accept the position of High Court Judge when offered. Only second-rate lawyers, he said, would be forthcoming for the office of High Court Judges. That would be a loss to the state. He also said provision should be made for a judge if he was to retire earlier then the age of 60 due to ill-health.

Mr. K. M. Munshi said that the decision of the Drafting Committee to fix the retiring age at 60 years was the best one under the circumstances. He said they should not consider the issue from the point of view of an individual Judge but from the point of view of the judiciary as a whole and from the point of view of the independence of the judiciary which they were so anxious to maintain and preserve. The retiring age limit, he said, should be fixed at 60 years and no scope of extension should be provided. Article 196 also debarred a retired Judge from practising in any court. If he was not debarred from practising in the later years of his office a Judge might conduct affairs in such a way as to attract more practice when he retired. A High Court Judge, he reiterated, must retire at the age of 60 with only two openings before him, ad-hoc Judge-ship or a chance of being recruited to the Supreme Court. If a judge was competent and found physically fit after retirement he might be picked up for the Supreme Court

Mr. Brajeshwar Prasad (Bihar) opposed the idea of fixation of age limit for High Court judges. In his opinion the age limit should be left to the discretion of the President on the advice of the Governor and Chief Justice of India.

RESTRICTION OPPOSED

Mr. Naziruddin Ahmed said that the point raised by Prof. Shibbanlal Saxena should be considered by the House. The principle behind Prof. Saxena's amendment, Mr. Naziruddin Ahmed said, had been already accepted by the House in connection with Article 103. Therefore, there was no harm in incorporating the principle here also.

As regards fixation of age limits for the High Court Judges, Mr. Naziruddin thought that it should be left to the Chief Justice and President to decide. It would not be wise to lay a constitutional restriction here. In England the age limit was 72. Experience had shown in India as well as elsewhere that High Court Judges were capable of discharging their duties efficiently even after the age of 60.

Mr. Pathaskar said that the provisions under the present article were more confused than ever. Originally when the draft constitution was prepared it appeared that they had in mind the idea of allowing High Court judges to continue in office till 60 or even later. In the Government of India Act also the age limit was 60 years. The Home Ministry later on recommended the fixation of age limit to be left in the hands of the Chief Justice. Now they were inclined to make a constitutional provision that a High Court Judge should retire at the age of 60 and the Chief Justice with the concurrence of the President might give an extention of tenure if he was so satisfied. In his opinion this resulted in an anomaly and they should fix the age limit at 60.

The House accepted the amendments of Dr. Ambedkar and rejected other amendments. The article as amended was adopted.

INDEPENDENCE OF JUDICIARY

Prof. K. T. Shah moved for the inclusion of a new article stating that no judge of the Supreme Court or the High Court who has been in service for 5 years should be appointed to any executive officer under the Government of India, including ambassadorship, trade commisionership and consulate. He said that the underlying principle of his article was complete separation of judiciary from executive.

Mr. H. V. Kamath supporting the new article said that Prof. K. T. Shah's intention was not to debar retired judges, but to debar judges in office being employed in the executive function. It was likely that in the eventuality of the Supreme Court judges differing from the views of the executive on the interpretation of constitutional points before them, they might be offered posts by the Govt. in power with the idea of removing inconvenient judges. This provision would eliminate such possibility and would enable the judiciary to maintain the highest integrity.

UNSATISFACTORY CONDITIONS

Dr. Ambedkar pointed out that there was no dispute over the question of separation of the executive from the judiciary and in all articles relating to the High Court and the Supreme Court, this object had been kept in mind. The separation of executive and judiciary meant that a person holding an office in judiciary must not have executive power. Prof. Shah's amendment dealt with a quite different proposition which laid down that a person who had been a member of the judiciary, after he had put in a number of years in service should not hold any executive office. He pointed out that the High Courts in India would be concerned with the adjudication of the rights of the people and the necessity for the opportunity of influencing the judiciary by the executive was very small.

The House must remember that the provisions as regards the judiciary in the constitution were not satisfactory from the point of view of the persons holding office. It would be unfair to impose further burdens on the members who accept the post of a Judge.

The House then adopted 3 more articles on the subject without amendments. They were article 194 concerning application to High Courts of certain provisions relating to the Supreme Court, article 195 on declaration by judges of High Court before entering office and article 196 on prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.

AMBEDKAR'S NEW ARTICLE

Dr. Ambedkar moved a new article substituting it for article 196. It read "no person who has held office as a judge of a High Court after the commencement of this constitution shall plead or act in any court or before any authority within the territory of India".

Sardar Hukum Singh moved an amendment seeking to restrict the prohibition of practice within the jurisdiction of the High Court concerned only and not throughout the Indian territory.

Mr. Kamath supporting Sardar Hukam Singh's amendment felt that the article imposed sweeping restrictions on the persons who held the office of the justice of the High Court.

Several members wanted to speak but the House passed a closure motion. The article was adopted after the House had rejected Sardar Hukam Singh's amendment.

Article 197 regarding salaries and allowances of high court judges was held over and the House accepted an amendment by Doctor Ambedkar, substituting a new article for 198, providing for temporary appointment of an acting Chief Justice when the Chief Justice's office was vacant, or when he was unable to perform his duties. Article 199 making provision for appointment of additional judges in high courts was dropped.

CALL UPON RETIRED JUDGE

There was a short debate on article 200 empowering the Chief Justice of a high court to ask a retired judge of that court to act as a judge of the court. The article contains a proviso that the consent of the retired judge concerned should be taken before he is called upon to act.

Mr. Jaspat Roy Kapoor (U. P.) moved an amendment which made it incumbent on the Chief Justice of a high court to take the consent of the President before calling upon any retired judge to act.

Mr. Kapoor said he was opposed to the proviso in the article regarding the consent of a retired judge being taken before he was called upon to act. Such a provision, he thought, was redundant and not dignified. He also wanted to know whether a retired judge who had been called upon to act would get the salary of a regular high court

(Continuer on next Col.)

Judge.

The House adopted article 202 relating to the power of High Courts to issue certain writs which Dr. Bakshi Tekchand characterised as the "bulwark of liberty".

The House adjourned till tomorrow.

—A. P. I.

HINDUSTHAN STANDARD

AN INDEPENDENT ORGAN OF INDIAN NATIONALISM

CALCUTTA, THE 8TH JUNE, 1949.

JURISDICTION OF THE SUPREME COURT

THE Constituent Assembly has defined the jurisdiction of the Supreme Court. The two most important features of any Government with a federal structure being the supremacy of the Constitution and the provision for a Supreme Court, the provisions relating to the jurisdiction of the Supreme Court in our Constitution are of very great importance.

Under Article 109, the Supreme Court will have original jurisdiction in any dispute between any of such parties as the Government of India, any one State and two or more States, in so far as the dispute involves any question, whether of law or fact, on which the existence or extent of a legal right depends. This Article did not raise much discussion in the Assembly. The main debate, at times very lively and interesting, centred round the appellate jurisdiction of the Court.

An appeal lies to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court gives a certificate that the case involves a substantial question of law as to the interpretation of the Constitution. Thus, the Supreme Court has not been given an original jurisdiction in cases involving questions of interpretation of the Constitution. Apparently this has not been done because that would have resulted in the flooding of the Court with cases which it would have been powerless to cope with. The High Courts under the Constitution will have authority to decide such cases subject of course to an appeal to the Supreme Court if the former certify that the cases or any of them involves any substantial question of law as to the interpretation of the Constitution. What is to be the procedure if any High Court refuses to give such a certificate? Under the Government of India Act 1935, it may be recalled, there was no express provision for such a contingency. The new Constitution, in anticipation of such cases, has provided for them. Article 10 (2) provides that in case of refusal of the High Court to give a certificate, the Supreme Court may grant special leave to appeal to it if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

The Court has been given an appellate jurisdiction in certain civil cases. An appeal shall lie to the Supreme Court from a judgment of a High Court in the territory of India if the High Court certifies that the amount of value of the subject matter of the dispute is not less than a specified sum. This sum was originally fixed by the Draft Constitution at Rs. 20,000. The Assembly has made the provision more elastic by empowering the Parliament to allow appeals even if the value of the subject matter in dispute is less than Rs. 20,000.

There was a sharp debate in the Assembly over the question of giving criminal jurisdiction to the Supreme Court. The Draft Constitution had no provision conferring such jurisdiction. The main point which was raised in the Assembly by a number of speakers was that the Draft Constitution valued money more than it valued human life. For whereas there can be an almost automatic appeal in a dispute involving Rs. 20,000, a man sentenced to death is not given any such right. It was, however, rightly pointed out by an eminent member that such right of appeal in criminal cases would mean that the Court will be simply inundated by thousands of cases every year. It may be noted that the Privy Council too never acts as a normal court of criminal appeal but only intervenes in cases where there may be grave miscarriages of justice or where the case is one of great public interest or importance. The Supreme Court, too, will have this power of intervention under Article 112. This Article empowers the Supreme Court to grant, in its discretion, special leave to appeal from any judgment in any matter, not provided for under other Articles, passed or made by any Court or tribunal in the territory of India.

A highly gratifying alteration made by the Assembly in the original provisions of the Draft Constitution is the abolition of the distinction between the High Court of a province and the High Court of a State in their relations to the Supreme Court. This arrangement will ensure the uniformity of law and justice all over India and help the evolution of a more closely integrated structure of political life in the country.

A number of important points should, however, be noted in connection with the provisions relating to the Supreme Court that have been adopted by the Constituent Assembly. What is a 'substantial' question of law? The connotation of the word 'substantial' has not been made clear in the Constitution. Constitutional experts have been known to opine that 'substantial' means "of considerable public interest or private importance." The determination of what is a 'substantial' question of law has been apparently left to the discretion of the courts concerned.

Secondly, circumstances are quite conceivable in which a High Court may misinterpret the Constitution. Can the Supreme Court directly intervene in such a case? Under the provisions of the Constitution, as adopted by the Assembly, the Supreme Court has no such power of intervention. What is to be the remedy in such cases? There is the indirect remedy of a relevant decision of the Court, but it may not be prompt in coming. It seems in future Parliament will have to make some provision for such cases under Article 114 which gives the Parliament power to enlarge the jurisdiction and powers of the Court. There is of course a final Constitutional remedy in the amendment of the Constitution in a suitable manner.

Thirdly, the President has been empowered to consult the Supreme Court and obtain its opinion, if necessary, in certain matters. It has also been provided that such opinions will be declared in open court. But the Constitution does not make it clear whether such 'opinions' of the Supreme Court, as distinguished from actual decorations of law, shall have binding effect on other courts. This, we consider, is a lacuna which should be removed.

Fourthly, does it not seem improper that condemned men have been given no constitutional right of appeal to the highest Court in the lealm? Dr. Ambedkar has felt the strength of the demand for such a right. He has tried to solve the difficulty by suggesting the abolition of death sentence altogether. This is a matter to which the future Parliament should give attention.

statesman 8-6-49.

PROVINCIAL JUDGES TO RETIRE AT 60

AMENDMENT ACCEPTED TO DRAFT CONSTITUTION

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Tuesday.—Judges of provincial High Courts must retire at 60, according to an amendment to the Draft Constitution accepted this morning by the Constituent Assembly.

Before adopting the relevant article, the House debated for nearly two hours why the retiring age for provincial judges should be five years lower than for judges of the Supreme Court as provided in Article 103.

Both Mr T. T. Krishnamachari, who moved the amendment, and Mr K. M. Munshi, who supported him, argued that several judges, even before reaching the age of 60, were wanting in the necessary vigour to administer justice.

According to Mr Munshi, the more brilliant among provincial judges would in any case serve until 65 because they would be selected for appointments in the Supreme Court and the earlier retirement of the others would mean no great loss to the country.

A former judge of the Patna High Court, Dr P. K. Sen opposed the amendment on the ground that the prospect of retiring at 60 would prevent distinguished lawyers from accepting appointments as judges, particularly when the pension offered was meagre.

Difference of opinion was equally sharp over a later article prohibiting judges from engaging in legal practice after retirement, an amendment restricting the ban to the jurisdiction of the High Court in which a judge had served being defeated.

In a completely irrelevant but amusing speech, Mr Mahavir Tyagi criticized lawyers for "twisting" the law to serve their ends, thus making justice a "commodity" to be purchased with high fees.

Mr Tyagi made the radical suggestion that the selection of High Court judges should not be confined to the legal profession but that it should be extended to people who could render justice though their knowledge of legal technicalities was poor.

(Agency report on page 4)

amendment seeking to fix the retiring age of a high court judge at 60 years | retiring age at 60 years. He personally was strongly in favour of raising it to | judiciary by the executive was very

U.S. LAYS DOWN FINANCIAL PROCEDURE

STATE LEGISLATURES TO FOLLOW CENTRE

RESTRAINT ON DISCUSSION OF JUDGES' CONDUCT

The procedure for passing money Bills and considering other financial matters will be the same in the State Legislatures as at the Centre. A series of articles and amendments to this effect were adopted by the Constituent Assembly yesterday without discussion.

The new procedure, as explained earlier by Dr B. R. Ambedkar, Law Minister, will enable Parliament to exercise stricter financial control and scrutinize the budget more thoroughly than at present.

As at the Centre, the States will have consolidated funds, appropriation Acts, etc.

The article relating to the language to be used in Parliament and State Legislatures was held over.

The House adopted an article restricting State Legislatures from discussing the conduct of judges of the High Courts and the Supreme Court in the discharge of their duties.

Mr B. Das (Orissa) said that he was not happy about the article, while Mr R. K. Sidhwa said that judges were not "supermen" and he could not understand what objection there could be in discussing their conduct.

The House adopted Article 92 detailing the procedure to be followed for the presentation of annual financial statements before the House of Parliament and the items of expenditure which should be charged on the revenues of India.

The Article stated that the President should cause to be laid before the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for each year, showing separately the sums required to meet expenditure under the head "Charges" and the sum required to meet other expenditure. The article included in the item of expenditure charges on the revenue, the salaries and allowances of the President, the Chairman and Deputy Chairman of the Council of State, the Speaker and Deputy Speaker of the House of the People and the Judges of the Supreme Court and pensions of the judges of the Federal Court and High Courts, the debt charges including interest, and sinking fund and any other expenditure that Parliament might declare as charged.

Financial Statements

Prof. K. T. Shah moved three amendments. He wanted that the Finance Minister should also be authorized to present a statement of accounts and that the statement should be presented only to the Lower House. The President or the Government should not be competent to modify or alter the statement once Parliament was seized of the subject and the items that had been mentioned as charged should be limited in character. He suggested that the last provision in the Article, namely, any other expenditure that parliament might declare as charged, should be deleted. Prof. Shah said that there should be no room for increasing the nature of items that could be kept out of the annual vote of the House and the future Parliament should not have the power to curtail the power of its own successor by withdrawing from the competence of its successor the right to vote upon financial matters.

Mr Kamath moved an amendment for the inclusion of the salaries of the Ministers and members of Parliament in the list of charged expenditure.

Dr Rajendra Prasad said: "I am afraid the amendment cuts across the principle of responsible government.

Dr Ambedkar moved an amendment for the inclusion of the salaries and allowances of the Auditor-General in the list of expenditure.

The House rejected Prof. Shah's amendments, while Mr Kamath withdrew his amendment. After passing the amendment of Mr Ambedkar the House adopted the article.

Procedure Regarding Estimates

Article 93 laying down the procedure in Parliament with regard to estimates was adopted with the incorporation of an amendment moved by Dr Ambedkar substituting the words "Consolidated Fund of India" for the words "Revenues of India." An amendment moved by Prof. Shah to the effect that Parliament should be empowered to withdraw items from the non-votable list of estimates of expenditure was lost.

Dr Ambedkar, in an amendment, brought forward a substitute article for Article 94. The original article empowered the President of the Union to authenticate the schedule of authorized expenditure. The new article sought to replace the procedure by appropriation Acts of Parliament. According to the article, after grants have been made by the Lower House, a Bill will be introduced in that House to provide for appropriation out of the Consolidated Fund of India all money required to meet grants made by the Lower House and expenditure charged on the Consolidated Fund shown in estimates previously laid before Parliament.

The article provides that no amendments shall be proposed to appropriation Bills which will vary the amount or alter the destination of a grant. The article lays down that subject to the next two articles making provision for supplementary or additional grants and votes on account, no money shall be withdrawn from the Consolidated Fund of India except under appropriation by law by Parliament.

Mr K. Santhanam, Minister of State for Transport, said that while there might be no material objection to the substitution of the original article, he could not help feeling that the new article was an unnecessary formality inflicted on financial procedure. This procedure had been adopted from the House of Commons where demands for grants were considered by a committee and, therefore, an appropriation Act by Parliament was necessary. In India demands for grants were considered by the whole House and when the House had already passed the grants, legally there was no necessity for appropriation Bills.

He also wanted the clause referring to additional grants and votes on account to go, as it nullified, he said, the entire effort to see that all items of expenditure were voted upon by Parliament.

Mr R. K. Sidhwa said he wholeheartedly supported Dr Ambedkar's amendment which he thought was necessary if there was to be a thorough check by Parliament on all items of expenditure.

Mr T. T. Krishnamachari said that Dr Ambedkar had already explained in detail on Wednesday the changes the Drafting Committee had sought to make in the scheme of financial control. There had been no vital change in the procedure, he said.

Referring to Mr Santhanam's objection to the clause regarding additional or supplementary grants and votes on account, Mr Krishnamachari said that Articles 95 and 96 laying down procedure for excess grants and votes on account had been introduced to tighten up financial procedure. Provision for supplementary grants had been made in order that the Government might not be "put in a strait jacket" and its initiative curtailed by frequent meetings of Parliament. If those provisions were taken away, it would be impossible for the Government to carry on without Parliament being called from day to day.

Mr Mahboob Ali Beg questioned the necessity for an appropriation Bill which he thought was only a formality in the changed conditions. No change could be made by the House in the Bill. He thought that the Speaker could merely authenticate that the expenditure had been granted by the House.

Ambedkar's Reply

Dr Ambedkar, replying to Mr Santhanam's criticism that the procedure of an appropriation Bill was unnecessary, said that the committee procedure of the House of Commons arose out of distrust of the King and the Speaker. Therefore, there was no connection between the committee procedure of the House of Commons and the necessity of an appropriation Bill. Up to 1930, taxes were levied in British India on the basis of resolutions passed by the House of Commons Committee of Ways and Means. When this procedure was challenged, the court ruled that Parliament must pass a law in order to enable the Government to levy taxes. Consequently, the British Parliament passed the Provisional Collection of Taxes Act. It was, therefore, an established proposition that what operated was law and not resolutions, and hence the need for an appropriation Bill.

Dr Ambedkar said that the procedure of authenticated schedule by the Governor-General was uncalled for having regard to the altered position of the President, who had to function in his discretion or individual judgment in matters of finance. The authority of Parliament should be supreme and not the authority of the executive as represented by the President. He pointed out that provision was made that no money could be drawn, whether for the supplementary or additional grants, without a provision made by law for drawing money from the Consolidated Fund. No authority was given to the executive and, as far as possible, the Drafting Committee wanted to make the provision in this regard not only "fool-proof but knave-proof."

The House adopted the article as amended by Dr Ambedkar.

The House adopted a substitute article for Article 95 moved by Dr Ambedkar to provide for supplementary, additional or excess expenditure. When expenditure is incurred in excess of the amounts sanctioned by Parliament, the President shall cause to be laid before Parliament the necessary statement or demand for such excess.

The House rejected an amendment moved by Mr R. K. Sidhwa which said that until both Houses of Parliament passed an excess demand, excess expenditure should not be incurred and if incurred, payment should not be made.

The provision for supplementary grants, Mr Sidhwa said, had made the executive "reckless." For instance, in the last budget, the revenue receipts were Rs 60 crores above the estimate. All that money and Rs 20 crores more were spent by the Government without the sanction of Parliament. Revenue estimates were deliberately put low to "hoodwink" Parliament. The executive thought that it had a long rope and could do what it liked.

Dr Rajendra Prasad, intervening, asked Mr Sidhwa to confine his remarks to his amendment and the article and not to discuss something that happened during the last budget debate.

Mr Sidhwa said that unless his amendment was accepted, the whole object of the constitution would be frustrated.

The House also rejected Prof. Shibbanlal Saksena's amendment seeking to fix the financial year from November 1 to October 31, in order to enable members to debate the budget for a longer period without having to sit through the summer months. Dr Ambedkar said that if Prof. Saksena wanted longer debates, he should be prepared to sit through the worst months of summer.

Mr B. M. Gupta (Bombay) said that Dr Ambedkar's substitute article went counter to the mandatory provision that no expenditure should be incurred without Parliament's previous sanction.

Contingency Fund

Replying to the debate, Dr Ambedkar recalled that when Mr Churchill's father became the Lord Chancellor the budget was placed before him showing the figures in decimals. Evidently he was not a student of mathematics and could not understand what the figures meant. So he wrote on the files "What do these damn dots mean?" Having regard to such difficulty of understanding from persons so highly placed as Mr Churchill's father, Dr Ambedkar said, "I am not at all surprised if members of the House also find a similar difficulty in understanding this provision." (Laughter).

Dr Ambedkar explained that if there was no provision for supplementary grants, the whole business of the executive would be held up. The passing of an excess grant was nothing else but an indemnity Act passed by Parliament to exonerate certain officers of the Government who had in good faith done something contrary to the law for the time being. "Unless you go to the length of providing that any executive officer who spends any money beyond what is sanctioned by the appropriation Act shall be deemed to be criminal and be prosecuted, you shall have to adopt this procedure of excess grants."

Dr Ambedkar said that he proposed to accept an amendment which would be moved by Pandit H. N. Kunzru for the creation of a contingency fund out of the Consolidated Fund to meet unforeseen expenditure.

General Rules Of Procedure

Articles relating to excess grants and special provisions in regard to financial Bills were adopted without amendments. Prof. Shah wanted by an amendment that a Bill which would involve expenditure from the revenues of India outside the frontiers of India in "warlike operations" should not be considered or passed by Parliament unless the President had recommended it and he should give his reason for it in writing. Prof. Shah contended that it was a necessary safeguard in view of past experience.

Mr Krishnamachari pointed out that the principle that only the executive should initiate any proposal involving expenditure was acknowledged on all hands. Prof. Shah evidently did not want India to participate in any imperialist war, but the very purpose of preserving the integrity of the country which he had in view would be defeated if the amendment was accepted. It would tie the hands of the executive in regard to expenditure on defensive measures on the borders of India. The House rejected the amendment.

Having disposed of the article relating to procedure in financial matters, the House took up Article 98 on the general rules of procedure. It stated that until rules were made by the Houses of Parliament, the present rules of procedure and standing orders of Parliament would continue. It was also provided that at joint sittings of the two Houses the Speaker of the House of People would preside.

Mr Jaspat Rai Kapoor wanted that the Chairman of the Council of States should preside in the absence of the Speaker of the House. He, however, withdrew his amendment following explanations by Mr T. T. Krishnamachari and Mr K. M. Munshi of the reasons for the deletion of the name of the Chairman of the Upper House. They said that the Chairman of the Upper House was the Vice-President of India having a unique position and it was not proper to provoke a delicate situation by providing that he should preside in the absence of the Speaker. The House passed the article.

The House adopted a series of articles the effect of which is that the financial procedure to be followed by State Legislatures would be the same as at the Centre.

Conduct Of Judges

The article relating to the language to be used in State Legislatures was held over. The House then adopted an article restricting the Legislature of a State from discussing the conduct of judges of the High Courts and the Supreme Court in the discharge of their duties.

Mr B. Das (Orissa) said he was not happy about the article and asked why such a restriction should be put on the Legislature.

Mr Sidhwa said that judges were not "supermen." Their judgment should not be discussed by the Legislature but there was no objection to their conduct being discussed, he said.

After adopting an article prohibiting courts from inquiring into proceedings of the Legislature, the House adjourned till Monday. — A.P.I.

USE OF HINDI NUMBER PLATES ON CARS

Dr Rajendra Prasad, President, yesterday in the Constituent Assembly today that he would take up with the Government the question of the use of Hindi number-plates on cars belonging to members of the Constituent Assembly. He would not like to give a ruling on members' privileges, he added.

Seth Govind Das (C.P.), who had drawn the President's attention to this matter on a previous occasion, and Mr Balkrishna Sharma (U.P.) said that under the Motor Vehicles Act, numbers had to be in Arabic numerals and letters in Roman script. Mr Sharma added that his own car was challaned on April 1, for bearing a Hindi plate.—A.P.I.

THE STATESMAN

DELHI, JUNE 11, 1949.

ABORIGINALS

THE approval of the clause in India's Draft Constitution that Bihar, Orissa, the C.P. and Berar should have Ministers in charge of tribal welfare, seems to have given satisfaction. That public attention should be periodically concentrated on these "backward" peoples is good. They create an inescapable and heavy responsibility. Said to number 26m. they lie scattered throughout the country, differing from their neighbours in language, dress, culture, religion and mode of life. For centuries they have resisted absorption. In this they are supposed to have been latterly aided by the British régime. Now much is changed. As the new constitution confers on each aboriginal full citizenship, he will need to be enabled—gradually or fast—to exercise it. This some consider, can be best achieved by speedily opening up the areas he inhabits to the modern influences by teaching him to read and write, ridding him of tribal superstitions, inducing him to turn from the thrill of the chase to a steady job with the plough, impressing upon him that his obligations are not limited to his family or tribe, but extend to the nation.

Such methods of enlightenment have, however, already been tried in parts of India, as elsewhere in the world, with almost uniformally unfortunate results. The Dewan of an Indian State once made the notable comment that he did not want railways because they brought dirt, disease, crime and strangers. Among the strangers who have invaded aboriginal areas have been self-seeking townsmen from adjacent areas who have mulcted the tribespeople with high rates of interest and deprived them of their land; earnest reformers from foreign parts who, with proselytizing zeal, have pronounced tribal customs and dances indecent; others who have substituted purdah or untouchability for a natural freedom and tolerance; prohibitionists whose disapproval of alcohol has upset tribal dietary needs; and, last by no means least, the well-meaning Government officers who have unwittingly sapped the aboriginals' honesty by introducing an alien law and its penalties, or petty officials who have wantonly abused their position, making the "lords of the forest" compulsory labourers. In many instances the intruders have succeeded in reducing their victims to that pitiable "halfway stage between civilization and an emasculated tribal life". Elsewhere the victims have risen in violence. The recent troubles among the Hajongs, now in Eastern Pakistan, and among the Adibasis of Orissa, have perhaps in considerable measure been attributable to such factors.

Not everywhere, fortunately, have the benevolent but unwise, or the predatory attempts at "reform" been allowed to develop into tragedy. In Assam, because of wise Governors, there has been evolved an outlook that other provinces might well ponder. An admirable continuity of policy has been maintained there. Despite clamour, the carpet-baggers have been kept out of the hills. Indigenous methods for self-government have been judged by their democratic nature and efficiency and encouraged. Efforts to extend administration or influence have not been marred by any sudden rushing of fences.

That so much has been achieved in Assam is however perhaps less remarkable than that it has not been achieved elsewhere. The principles underlying it are not difficult. But a deaf ear has often been the consistent reward of those who warned against the consequences of hasty, misinformed attempts at tribal or aboriginal "reclamation". Nearly 20 years have passed since Mr S. C. Roy pointed out that "forest tribes are slowly but surely dying out, partly from famine, partly from loss of interest in life". Dr Hutton, taking the 1931 census, saw "semi-civilized aboriginals falling into that psychological apathy and physical decline that has decimated so many tribal communities in the Pacific and elsewhere" Dr Verrier Elwin has told how "the life has gone from many (Gond) villages. Child marriages have started, untouchables are despised, the women have lost their freedom. At the very moment when India has roused herself to banish these things, they are being introduced into her remoter areas where not known hitherto" Mr J. P. Mills has depicted the plight of the Naga who "told year in and year out that all past history, all the strivings all the old customs of his tribe are wholly evil, tends to despise his own race, and no night of the soul is blacker than that" The discovery that education, unless fitted to simple tribal needs creates misfits is not new These pitiable objects may be seen anywhere on this sub-continent, from the bazaars of Pathan borderlands to the Naga Hills—and on many other parts of the globe too. The astonishing fact is that the lesson created by the many known examples of such needless degeneracy is so little heeded.

No rational person would contend that India's aboriginals and border tribes can remain indefinitely unaffected by increasing pressure on land and the growth of communications. There are aspects of tribal life that should not nowadays be tolerated: head-taking among the remoter Nagas, for example, or slavery among the Apa Tanis. The possibility of raids into settled districts must be firmly guarded against, Jhumming or bewar though its waste is sometimes exaggerated, must be controlled. Few aboriginals are not in need of agricultural instruction and medical aid. But facts generally accepted that sound reform cannot be achieved fast, nor be effected at all by ruthless overthrow of tribal law, custom and authority. Yet these seem so grievously threatened by many novel factors in India that the need for protecting tribesmen from those who would earnestly or otherwise "reclaim" them is a paramount need today. How far the Tribal Advisory Councils envisaged in the Draft Constitution will provide such a protection is difficult to forecast. The task may well eventually devolve upon provincial Governors, with intelligent backing from the Centre

Tribune 1-7-49

GENERAL ELECTIONS NEXT YEAR?

(From Our Special Representative)

NEW DELHI, June 30—Usually well-informed political observers envisage a possibility only a possibility and not yet a probability of the general elections being held early next year under the old constitution and franchise with the exception of joint electorates plus reservation of seats for the Scheduled Castes.

The general elections, if held, would be in respect of the provincial legislatures only. Under the tentative proposals—the subject matter of informal top-level discussions—the new interim Parliament would be elected on indirect basis by the newly elected members of the provincial legislatures. At the moment the matter is at the preliminary stage, but may be discussed at the next meeting of the Congress Working Committee and in the Union Cabinet later in July.

The provincial legislatures end their five-year term by the end of 1950. A feeling is growing that it would be well nigh impossible and impracticable to hold general elections under the new constitution for another two or three years and at the same time it would not be democratic to extend the life of the provincial legislatures. The elections, it is argued, would clear the air and provide a testing time for the Congressmen now engaged in mutual strife, bickerings, and personal rivalries and a measuring, of strength with the Socialists, Communists, and others. Besides, the political situation in the provinces like the East Punjab, West Bengal, Madras, and the Central Provinces would get stabilised.

The present Constituent Assembly will terminate its work by autumn or early next year and its other self the Parliament will have to hold by-elections for about 120 seats for such members as belong both to the provincial and the Central Legislatures. Instead of having 120 by-elections, it would be better to have all the seats filled on the new members of the provincial legislatures.

No decision has yet been reached as the matter is being discussed at a high level only to evolve proposals to be placed before the Congress Working Committee and the Central Cabinet.

Observers here, however, consider the general elections on the old basis for the provinces as a distinct possibility.

NEW CONSTITUTION MAY NOT BE INTRODUCED ON JAN. 26

NEW DELHI, June 30.— Sir George Spence, at present Legal Adviser to the Hyderabad Government and a former Secretary to the Legislative Department, the Government of India, has been invited to help the Constituent Assembly with his expert opinion in finalising the draft constitution, it is understood. He is expected to arrive at New Delhi by the week-end from Hyderabad.

Every effort is being made to complete the clause-by-clause consideration of the remaining portion of the draft constitution by the 15th of August as was hinted at by Dr. Rajendra Prasad. It is, however, considered extremely doubtful whether the Assembly, which is meeting on July 30 next, would be able to conclude discussion of nearly 80 clauses and eight schedules, many of which are of contentious character. This is likely to affect the decision to introduce the new constitution on January 26, 1950.

Meanwhile, the Assembly Secretariat is busy scanning the controversial issues. The conference of Premiers and Finance Ministers of Provinces with the Drafting Committee is expected to be held on July 20 next to discuss the intricate problem of the allocation of finances between the Centre and the Provinces as well as the States.

The Premiers attending the conference are also expected to be consulted about the composition of upper houses in the provinces. Important changes in the composition of the chambers are expected to be made at the next session of the Assembly. One of the suggestions under consideration seeks to leave the question whether there should be a upper Chamber or not as also its composition.

The States Ministry is understood to be in negotiation with the members of the Drafting Committee on the question of the future constitution of the states and states unions. Provisions relating to services are being examined by the Federal Public Service Commission and they are expected to make some suggestions.

National language and citizenship are the two most controversial issues awaiting solution by the Constituent Assembly at its final session. But these issues are expected to be thrashed out at the Assembly Congress Party meeting before the Assembly meets.

Hindu 5-7

INDIA'S DRAFT CONSTITUTION

NEW PROVISIONS ANALYSED

ASSEMBLY SESSION IN RETROSPECT

(FROM OUR CORRESPONDENT.)

NEW DELHI, July 3.

It may be of interest to review the work of the last session of the Constituent Assembly which adjourned in the middle of June after a strenuous one-month session. During this session the Assembly completed the adoption of nearly three-fourths of the provisions of the Constitution. The more important of these related to legislative and financial procedure in Parliament and in the State Legislatures, the Union and the State Judiciary, the Provincial Executive, administrative and legislative relations between the Union and the States, Election Commission and elections to Parliament and the State Legislatures and special safeguards for minorities. The provisions relating to Fundamental Rights, directive principles of State policy, the Union Executive and the composition of Parliament and the State Legislatures had already been adopted by the Assembly in its earlier session held in November-January last.

The provisions which have yet to be considered and adopted concern citizenship, the official language (or languages), the distribution of revenues between the Union and the States, the steps to be taken in an emergency arising from war, domestic violence or failure of constitutional machinery, the position of the present Indian States and the Centrally administered areas under the Constitution, the Services amendment of the Constitution, transitional arrangements, etc. There are, in addition, the Schedules.

"NO TAXATION WITHOUT LAW"

Among the more important changes made by the Assembly in the Draft Constitution as originally introduced, one relates to the procedure in Parliament and the State Legislatures in regard to financial matters. This lays down the salutary principle that there shall be no taxation without law. Provision has been made for the creation of two funds, to be known respectively as the Consolidated Fund and the Contingency Fund. The former is intended to ensure that all revenues raised by taxes or received in other ways are, without being appropriated to any particular purpose, collected together into one Fund so that Parliament, when it comes to vote upon the budget, has at its disposal a Fund which it could disburse. In other words, the institution of such a Fund would prevent the proceeds of taxes being frittered away by laws made by Parliament for individual purposes without regard to the general necessity of the people. The Contingency Fund is in the nature of an imprest, into which will be paid such sums as may be determined by law as advanced by the President for meeting unforeseen expenditure not yet authorised by Parliament.

Then, there is the further provision made for the passing of an Appropriation Act, in place of the existing Schedule of authorised expenditure which required authentication by the President. This change, it is claimed, will establish the supremacy of Parliament in the matter of Finance. Under the Constitution, no expenditure can be incurred unless it has been sanctioned by Parliament, and the proper authority to certify such sanction, it is felt, should be Parliament itself and not the President. The next change introduced in this group of provisions relates to what is called vote on account. This provides for Parliament allowing in advance a lump sum grant to the Executive in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure for the voting of such grant and the passing of the law in relation to that expenditure. Identical provisions also have been introduced in the States part of the Constitution.

All these charges, it may be said, bring the financial procedure in the Indian Parliament and the State Legislatures into line with that obtaining in Britain.

The next change of importance is the inclusion in the Constitution of a new provision dealing with the appellate jurisdiction of the Supreme Court in criminal matters. Under this provision, the Supreme Court will have power to entertain and hear appeals from High Courts in the following cases:-

(i) if the High Court on appeal reverses the order of acquittal of an accused person and sentence him to death; or

(ii) if the High Court has withdrawn for trial before itself any case from a court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(iii) if the High Court certifies that the case is a fit one for appeal to the Supreme Court, the certificate, however, being made subject to such rules as may be made by the Supreme Court and to such conditions as the High Court may establish or require.

Parliament has also been given the right to confer on the Supreme Court by law further powers to entertain and hear criminal appeals, subject to such conditions and limitations as may be specified in such law. This new provision was introduced in response to a general desire expressed by several members of the Assembly who felt that, while under the Constitution extensive rights of appeal had been conferred on a civil litigant, the right of a condemned person to appeal to the highest court of justice had been unduly restricted.

Another new provision introduced in the Chapter on the Judiciary confers power on the Supreme Court to review any judgement or order passed by itself. The provisions in this Chapter as adopted by the Assembly also do away with the distinction originally contemplated between the Supreme Court's appellate jurisdiction over High Courts in the Provinces and High Courts in the Indian States. This was done with a view to making judicial procedure uniform throughout India. Also, this accords with the present assumption that under the new Constitution the Indian States will be brought, as nearly as possible, to the same level as the Provinces in all respects, politically as well as administratively.

APPOINTMENT OF GOVERNORS

The next important change relates to the mode of appointment of Governors. The Drafting Committee had proposed two alternatives in the Draft Constitution. The first of these, which was in accordance with an earlier decision of the Assembly, required the Governor of a State to be elected by the direct vote of all the adult voters in the State. The second provided that the Governor should be appointed by the President from a panel of four candidates to be elected by the members of the State Legislature in accordance with the principle of proportional representation. The provision as now adopted by the Assembly lays down that the Governor shall be appointed by the President by warrant under his hand and seal; or, in other words, the Governor of a State is now to be a wholly nominated person. One of the main reasons which influenced such a change was the fear that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration.

The provision in the Draft Constitution which seeks to vest authority in Parliament to legislate, in the national interest, with respect to a subject in the State list has also undergone some important change in its final form. The original provision enabled Parliament to undertake such legislation on the passing of a resolution by the Council of States supported by not less than two-thirds of the members present and voting, without any further limitation on this power. The clause as now adopted limits the period during which the resolution shall ordinarily remain in force to one year, though it may be extended from time to time by one year at a time on the passing of a similar resolution. A law made by Parliament in pursuance of this resolution shall cease to have operation on the expiration of a period of six months after the resolution ceases to be in force.

The Constituent Assembly has introduced important changes to the provision regarding the electoral machinery under the Constitution. The original provision contemplated separate Election Commissions for the Centre and for each of the States. The provision as now adopted vests the superintendence, direction and control of all elections, Central as well as State, in a single Commission. The Commission is to consist of a Chief Election Commissioner (who will be its Chairman) and such number of other Commissioners as the President may from time to time fix. All the Commissioners are to be appointed by the President, subject to any law made by the Parliament in this behalf. Provision has also been made for the appointment of Regional Commissioners, where necessary, to assist the Central Commission in elections in the various States. The Chief Election Commissioner shall not be removed from office except in like manner and on the grounds as a Judge of the Supreme Court; and the conditions of his service shall not be varied to his disadvantage after his appointment. The other Election Commissioners or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. The functions of the Commission are the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislatures of every State and to the offices of President and Vice-President, including the appointment of election tribunals. Power has been vested in Parliament to legislate with respect to all matters connected with elections to both Houses of Parliament and to the Houses of the Legislatures of the States, including the preparation of electoral rolls and all other matters necessary for securing the due constitution of the Houses and the delimitation of constituencies. The State Legislatures have been given power to legislate in regard to State elections only to the extent provision is not made by Parliament.

One of the chief considerations which influenced the Assembly in the shaping of these provisions is that the authority in charge of the elections should be a wholly independent and impartial body, free from executive control and party or personal bias. It was, again, to accord with this principle that it was decided to vest the *entire authority in a single* Commission rather than in different Commissions in the different units as originally intended.

ABOLITION OF SPECIAL RESERVATION

The Constituent Assembly also decided to abolish, during its last session, special reservations in the Legislatures for religious minorities. This decision was taken in pursuance of a recommendation made by the Advisory Committee of the Assembly on Minority Rights and had the almost unanimous support of all sections of the House. It is noteworthy that the resolution in the Advisory Committee seeking the abolition of these reservations was moved by a member belonging to a minority. Conditions having vastly changed since the Draft Constitution was introduced in the Assembly, it was considered inappropriate that, in the context of free India and of present conditions in the country, there should be reservation of seats for Muslims, Christians, Sikhs, or any other religious minority. It was also felt that although the abolition of separate electorates had removed much of the poison from the body politic, the right to a certain degree of separation would be to that extent contrary to the conception of a secular democratic State. It was accordingly decided that the provisions in the Draft Constitution relating to reservation of seats in the Legislatures for Muslims and Christians should be omitted. There will, however, be reservation for the Scheduled Castes and Scheduled tribes on the ground mainly of their economic backwardness, but only for a period of ten years.

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THE FREE PRESS JOURNAL

BOMBAY, WEDNESDAY, JULY 6, 1949

A NEW PARLIAMENT?

The Indian Constituent Assembly is nearing the end of its labours.

We are told that as soon as the new Constitution is finished, there is likely to be an election for a Parliament of India.

There will be no general election on the old, restricted franchise. The members of the new Central Legislature will be elected by the Provincial Legislatures.

It is difficult to see any justification for this step.

Such an election will by no means be an appeal to the country.

Constituted as the Provincial Legislatures now are, there is no doubt that practically the same set of members who now sit in the Central Legislature will be returned again.

Every Provincial Legislature now has an overwhelming Congress majority and any Central Legislature that is elected by them will reflect their party alignments faithfully.

In any case fresh general elections are promised soon after the winter of 1950.

It will not make much difference if the present Parliament continues until that time.

The only argument in favour of new elections is that the existing dual membership of 78 members, who sit in the Central as well as in a Provincial Legislature, can be avoided.

This object can be very well achieved if these members are asked to resign, their seats being filled up by fresh elections.

We are glad that the Central Government and the Congress High Command have given up the idea of having fresh elections on the old restricted franchise.

The country has been promised adult franchise. Madras and East Punjab are said to have completed the enumeration of voters. Other Provinces are busy about the task.

More work remains to be done. The delimitation of constituencies has to be carried out.

The country will not mind waiting for a few months until all this work is finished in a satisfactory manner if the elections that are to take place are on the new adult franchise.

Though a great deal of work has to be done between now and the elections, the time is not too long for the Congress to try to set its house in order.

The results of recent elections in Bombay and Calcutta have brought home to our leaders the conviction that Congress is no longer in the commanding position that it held a short while ago.

Our leaders and Governments should take an object lesson from the East Punjab.

Conditions there were as bad as in any other Province. Party divisions were, if anything, worse.

Since the Sachar group took power, however, vigorous measures have been taken to root out corruption.

Some arrests without respect of person or position, were made and Mr. Bhimsen Sachar the Premier has promised that the enquiry will be pushed through to the end.

This is said to have had a salutary effect on public opinion in the Province.

Complaints of corruption have been heard in many other places. But nowhere has any serious action been taken to prove or disprove them.

If Congress is to resume its old position of leadership—and it has to do so if the country is to progress—this line of action must be followed without fear or favour.

Party squabbles must be given up.

Corruption must be rooted out.

The ideal of service must once again be held up as the one to follow.

Patriotism must not be made a business of profit.

HINDUSTHAN STANDARD

AN INDEPENDENT ORGAN OF INDIAN NATIONALISM

CALCUTTA, THE 7TH JULY, 1949.

GENERAL ELECTIONS

SOME recent speculations in the Press have focussed the attention of the public on the subject of the next general elections in India. Who exactly started the hare we are unable at the moment to trace. We note, however, that, while some public men and organs of public opinion have expressed themselves vigorously against the suggestion for the postponement of the general elections under the new constitution i.e. under the scheme of adult franchise and the holding early next year of the elections under the old constitution, no suggestion to this effect, not even the remotest one, has come from anyone in a position of authority either in the Government or in the Congress. It seems to us a permissible inference therefore that the prevailing speculations are of the nature of kite-flying by uninformed persons which should not, in fairness, be exploited by anyone to make political capital for parties in opposition to the Congress.

Our own views on this subject we had stated some time ago, quite clearly and emphatically. We have not resiled from that position. We hold that the general elections should be held as early as possible but not under the provisions of the old constitution nor according to some make-shift arrangement such as has been suggested by more than one correspondent. We would not like an indirect election to the Central Legislature even as an interim measure. We are not enamoured of the Constituent Assembly functioning also as the nation's Parliament for some time more to come. The arrangement, unsatisfactory at the very beginning, has, in the course of the last two years, become cumbrous on account of the successive entry of a good number of representatives of the States as members of the Constituent Assembly. The fact that nearly 100 out of 307 members of the C.A. are also members of Provincial Legislatures whose participation in the proceedings when the Assembly sits as Parliament, has been banned by Pandit Nehru as the leader of the Party, has also materially affected both the competence and the representative character of the law-making body. These, however, are arguments for its dissolution for the purpose of reconstruction as a true people's Parliament. That purpose cannot be realised through the process of indirect election by members of the existing Provincial Legislatures as has been suggested in some of the recent speculative Press reports. Indirect election has a bad odour about it. Besides, to representative character of the existing Provincial Legislatures has also been, of late, under serious challenge from the opposition groups. It would, in such circumstances, be highly inexpedient on the part of the Authorities to take recourse to the device of indirect election to remove the defects which have been inviting criticisms. The strongest argument, in our view, against such a course of action at this time is that it may be misunderstood and will certainly be misinterpreted as a subtle move to prolong the existing arrangement for the governance of the country.

We hold strongly that the constitutionally sound, politically expedient and ethically just course of action for the Authorities is to hold the general elections as early as possible under the provisions of the new constitution. The preparation of the electoral rolls is no doubt a difficult task; even more difficult undoubtedly is the task of delimitation of the constituencies. But the tasks are such as must be faced and cannot be postponed indefinitely. In fact, part of the work of the preparation of the rolls has already been done. Preliminary rolls on the basis of adult franchise have been prepared in West Bengal and, it now seems, also in Madras and East Punjab. What remains to be done can certainly be completed in a few months if the Provincial Governments are made energetically to move in the matter. So far as the delimitation of the constituencies are concerned, we do not think that a period of a year is too short for the purpose. The task, after the enactment of the 1935 constitution, was completed in a shorter period. In any case, we do not see any insuperable difficulty in holding the general elections sometime in the second quarter of 1951 if not earlier, if in the meantime the Constituent Assembly is whipped up to complete its work. The probability of successful adherence to such a time-table is so strong that we do not see any justification for making any interim arrangement, especially because any such arrangement is bound to be misinterpreted by a section of the critics of the Congress as a move indefinitely to postpone general elections. The point which has been raised in some quarters as to the legal competency of the Constituent Assembly to continue to function as Parliament even after the passing of the Constitution, even if held valid, should not be stretched for the purpose of holding an indirect election to the Parliament. Special legislation will be necessary for any election of that kind. The process, we think, may well be adopted to validate the continuity of the existing Parliament for some time more to come. No one can reasonably find fault with that if the legislation we suggest follows a solemn declaration that general elections under adult franchise shall be held by the middle of 1951 latest.

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Our own views on this subject we had stated some time ago, quite clearly and emphatically. We have not resiled from that position. We hold that the general elections should be held as early as possible but not under the provisions of the old constitution nor according to some make-shift arrangement such as has been suggested by more than one correspondent. We would not like an indirect election to the Central Legislature even as an interim measure. We are not enamoured of the Constituent Assembly functioning also as the nation's Parliament for some time more to come. The arrangement, unsatisfactory at the very beginning, has, in the course of the last two years, become cumbrous on account of the successive entry of a good number of representatives of the States as members of the Constituent Assembly. The fact that nearly 100 out of 307 members of the C.A. are also members of Provincial Legislatures whose participation in the proceedings when the Assembly sits as Parliament, has been banned by Pandit Nehru as the leader of the Party, has also materially affected both the competence and the representative character of the law-making body. These, however, are arguments for its dissolution for the purpose of reconstruction as a true people's Parliament. That purpose cannot be realised through the process of indirect election by members of the existing Provincial Legislatures as has been suggested in some of the recent speculative Press reports. Indirect election has a bad odour about it. Besides, the representative character of the existing Provincial Legislatures has also been, of late, under serious challenge from the opposition groups. It would, in such circumstances, be highly inexpedient on the part of the Authorities to take recourse to the device of indirect election to remove the defects which have been inviting criticisms. The strongest argument, in our view, against such a course of action at this time is that it may be misunderstood and will certainly be misinterpreted as a subtle move to prolong the existing arrangement for the governance of the country.

We hold strongly that the constitutionally sound, politically expedient and ethically just course of action for the Authorities is to hold the general elections as early as possible under the provisions of the new constitution. The preparation of the electoral rolls is no doubt a difficult task; even more difficult undoubtedly is the task of delimitation of the constituencies. But the tasks are such as must be faced and cannot be postponed indefinitely. In fact, part of the work of the preparation of the rolls has already been done. Preliminary rolls on the basis of adult franchise have been prepared in West Bengal and, it now seems, also in Madras and East Punjab. What remains to be done can certainly be completed in a few months if the Provincial Governments are made energetically to move in the matter. So far as the delimitation of the constituencies are concerned, we do not think that a period of a year is too short for the purpose. The task, after the enactment of the 1935 constitution, was completed in a shorter period. In any case, we do not see any insuperable difficulty in holding the general elections sometime in the second quarter of 1951 if not earlier, if in the meantime the Constituent Assembly is whipped up to complete its work. The probability of successful adherence to such a time-table is so strong that we do not see any justification for making any interim arrangement, especially because any such arrangement is bound to be misinterpreted by a section of the critics of the Congress as a move indefinitely to postpone general elections. The point which has been raised in some quarters as to the legal competency of the Constituent Assembly to continue to function as Parliament even after the passing of the Constitution, even if held valid, should not be stretched for the purpose of holding an indirect election to the Parliament. Special legislation will be necessary for any election of that kind. The process, we think, may well be adopted to validate the continuity of the existing Parliament for some time more to come. No one can reasonably find fault with that if the legislation we suggest follows a solemn declaration that general elections under adult franchise shall be held by the middle of 1951 latest.

Hindustan Times 8-7-49

CENTRE'S POWERS IN PROVINCIAL FIELD

PREMIERS TO DRAW UP LISTS WITH C.A. DRAFTING COMMITTEE

(By Our Special Correspondent)

NEW DELHI, Thursday. — The Drafting Committee of the Constituent Assembly will have a busy time when the Premiers and Finance Ministers of provinces arrive in New Delhi in the third week of this month for final conferences to settle some of the important outstanding issues connected with the Centre's relations with the units.

On July 20 the Assam Premier will confer with the Drafting Committee to decide questions relating to the position of Scheduled Castes and tribal people in that province. From July 21 to 24 the provincial Premiers and Financial Ministers will meet the Drafting Committee to discuss the allocation of finances between the Centre and the provinces and to draw up the Union, Concurrent and State Lists.

On July 26, the Drafting Committee will hold a conference with special invitees to discuss clauses relating to citizenship.

All these issues are expected to be put out of the way by July 30 when the Constituent Assembly meets to conclude second reading of the new Constitution by August 15. The decisions will have, of course, to be approved by the Congress Party, but it is felt that after the conferences between July 20 and 26 not much room will be left for controversy either at party meetings or in the Constituent Assembly itself.

P.T.I. adds: The Drafting Committee, it may be recalled, has already incorporated in the Draft Constitution the recommendations of the Expert Finance Committee on the question of the provincial share in the Central finances and other cognate items.

States' Finances

In so far as the States are concerned, a separate committee had submitted its report on the integration of States' finances, which will also be considered by the appropriate authorities.

In view of the unstable financial conditions the Drafting Committee thought it best to retain the present arrangement in respect of the provinces and suggested that at the end of five years a finance commission be set up to review the situation.

The problem, in its various aspects, will again be discussed with the representatives of the provincial Governments before it is finalized.

The Tribune

Ambala Cantt., July 9, 1949

ELECTIONS

Despatches have appeared in the newspapers discussing the prospect of an early general election. As all such messages have emanated from Delhi, it may be assumed that the subject is engaging the attention of the Cabinet as well as of members of the Constituent Assembly. The possibilities discussed are: elections to the Provincial Legislatures under the old constitution; and the election of a new Parliament for the Centre soon after the Constituent Assembly has finished drafting the Constitution. It will appear that the first flush of enthusiasm for an early election has receded with the realisation of the practical difficulties. The reasons given are: that the old electoral rolls of the provincial legislatures have not been revised, that the old voters list has become obsolete partly because of the mass migration and partly because of the new basis of joint electorates, and that constituencies will have to be redemarcated. The conclusion reached is that there is no prospect of the country going to the polls to elect either a parliament or provincial legislatures, before the winter of 1950. It would, in fact, occasion little surprise if it is later found necessary to have a further postponement.

The preparation of electoral rolls on the basis of adult franchise is not an easy matter. The printing of these rolls alone may not be completed in time for the elections to be held by the end of next year. Moreover, it is important that the first electoral rolls should be prepared with meticulous care both to avoid post mortem recrimination between rival candidates and to set a standard for subsequent elections. We had suggested earlier that the preparation of rolls should be placed under the direction of the Census organization. The Provincial Governments have considerable data in their possession as a result of rationing. East Punjab and West Bengal have possibly more information obtained in the course of rehabilitation of those who have migrated into the Indian Union from Pakistan. All available information should be pooled with one centralised authority which will not be influenced by political considerations. There can be no more disinterested organization than the office of the Census Commissioner.

The preparation of rolls and the date proposed for the elections are matters on which there should be consultations, even though informal, between the party in power and other political parties. The Socialists have already expressed their anxiety to contest the election on the basis of adult franchise. While it has derived considerable strength from the dissensions and disruption in Congress ranks, it is extremely doubtful whether it is as yet strong enough to make an appreciable impression by the next elections, even if they are held a year or so later. While the weakness or strength of a political party should not determine the time for the holding of the general election, it is important that the Socialists should realise that postponement has no advantage for the Congress. A firm decision in favour of postponement now, will serve the useful purpose of obviating extravagant political criticism which has already begun to manifest itself in anticipation of an early election. We are fully aware of the many good reasons advanced for holding the elections by the end of next year, but the balance of advantage lies with taking every precaution to ensure that the preparation of the electoral rolls and the holding of the elections conform to the highest democratic standards.

The Tribune

Ambala Cantt., July 10, 1949

ELECTIONS

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THE STATESMAN

DELHI, JULY 22, 1949

Hindu 22-7-49

CONSTITUTION-MAKING

It has been agreed at New Delhi—subject to confirmation—that India's draft Constitution shall provide a constitution for States Unions and viable Princely States. The model suggested by the Rau Committee will be adopted; this in general follows the provisions relating to the provinces.

Thus integration and democratization take a new, momentous and rapid step forward. Ever since the Government of India Act 1935 was passed, proposals about new constitutions for the Indian States have been constantly discussed, less frequently acted on. A few States even in the late thirties were almost as advanced as the provinces, but the vast majority lagged far behind, many had taken no initiative. Before World War II, Kashmir's constitution was thought at New Delhi to be a model of its kind. This is all now a matter of history. It remains to be seen how effectively up-to-date democratic forms can be applied to units that have a constitutional background very different from the provinces'.

"We must educate our masters" said the constitutional reformers of Victorian Britain. Leaders in some States Unions have a task similar in nature but vastly more complex. On the other hand, those segments of Princely India that were most backward are now either merged with provinces or Centrally administered; their destiny is thus linked with populations and Governments equipped by experience to give them guidance. The procedure proposed for States Unions and viable States certainly seems more expeditious than letting each unit frame its own constitution.

INDIA'S DRAFT CONSTITUTION

DISTRIBUTION OF POWERS

CHANGES DISCUSSED

(FROM OUR CORRESPONDENT.)

NEW DELHI, July 21.

The Drafting Committee considered to-day the Seventh Schedule to the Constitution, dealing with Federal, Provincial and Concurrent lists. Premiers of Provinces and States and States Unions were present. The Ministers of the Government of India attended, when subjects relating to their Ministries were under discussion.

It is understood that among the changes which found general approval were the transfer of Public Health and Vital Statistics from the Provincial list to the Concurrent list and making the censorship of cinematograph films, which was previously in the Concurrent list, an exclusively Central subject.

In the light of the changed conditions in the country and to ensure uniformity in the administration, it was considered desirable to amend the Union list and the Concurrent list (adds the P.T.I.) Certain items which are now in the State list have been transferred to the Union list.

The Provincial Premiers, it was learned, did not object to the proposed amendments, the principles of which were agreed to after a full discussion. Appropriate amendments will now be drafted and placed before the Constituent Assembly when the lists come up for adoption.

Pandit Jawaharlal Nehru, Prime Minister, Mr. N. V. Gadgil, Minister for Works, Mines and Power, Maulana Abul Kalam Azad, Minister for Education, Dr. Syama Prasad Mookherjee, Minister for Industry and Supply, Dr. Jivraj Mehta and Labour and Finance Ministry officials attended the meeting.

All the Provincial Premiers, except Mr S. K. Sinha of Bihar, were also present.

UNION LIST

Among the items which the Conference decided to be included in the Union lists were: Benares, Aligarh and Delhi Universities and any other University declared by Parliament to be an institution of national importance; institutions for scientific and technical education financed by the Government of India; co-operation and maintenance of standards of higher education; vital statistics; river valley projects; development of inter-State rivers and inter-State waterways for purposes of flood control; irrigation, navigation and hydro-electric power; social insurance and social security.

It was understood that some of the amendments agreed to cover the industrial and labour sphere.

The Concurrent list has also been amended to give more powers to the Centre.

The Conference will resume its discussions to-morrow to discuss financial provisions of the Draft Constitution and distribution of revenues between the Centre and the Provinces as also certain amendments suggested by the Home Ministry pertaining to services and the maintenance of law and order.

The discussion will be of a preliminary character and will be continued on July 24, by which time, Dr. John Matthai, India's Finance Minister, will have returned to India from England to participate in the discussion.

It was learnt that Pandit Jawaharlal Nehru will meet the Premiers of the Provinces and States Unions on Saturday next and hold informal discussions about the internal situation, food problem and other urgent domestic issues.

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India news cronicle 24-7-47

WIDER POWERS FOR UNION PRESIDENT IN NEW CONSTITUTION

NEW DELHI, Saturday.—The powers of the future President of the Indian Republic in dealing with a failure of the constitutional machinery in a State of the Union will be considerably widened by an amendment sought to be made to the relevant provision in the Draft Constitution, it was learnt here today. The principle of the proposed change is believed to have been agreed to by the provincial Premiers at their conference with the Drafting Committee today.

More Central Control Over Law And Order

Provincial Premiers and the Drafting Committee met this afternoon at the residence of Sardar Patel, Home Minister, to consider a number of amendments which the Home Ministry had suggested. New items which have been added to the schedule of the list of Union subjects include powers to the Central Intelligence Bureau to investigate offences in provinces and States and the raising by the Centre of an armed constabulary (as distinct from the armed forces) for the protection of the country. There was as similar item in the old Government of India Act, 1935, whereby there was the Crown Police Force but this section was deleted in the Adaptation Order.

UNIFORM LEGISLATION

The item regarding the power of a State to undertake preventive detention for the maintenance of public order which was on the State list (provincial sphere) has now been included in the concurrent list. This, it is stated would ensure uniformity in the legislation of public safety acts. The maintenance of public order, however, would continue to be the responsibility of the provinces or States.

The provisions in case of failure of constitutional machinery in States are set out in Section 278 of the Draft Constitution. Among other things a proclamation of emergency under this provision has to be laid before each House of Parliament which reserves to itself the functions of the State legislature. This clause which has five sub-clauses and prescribed in detail the various steps to be taken in case of the failure of the Constitution in a State is now sought to be replaced by simpler one.

The amended clause, it is understood, will authorise the Governor of a State, if a situation arose in which the Government of the State could not be carried on in accordance with the provisions of the Constitution, to assume by proclamation to himself the power to run the administration of the State. This power, however, is governed by another provision, which requires a State (provincial) Governor to communicate to the President of the Republic the proclamation of an emergency. The President has powers either to revoke the proclamation or take such action as he considered appropriate. The new section is analogous to Section 93 of the old Government of India Act regarding the provisions in case of failure of constitutional machinery. —PTI.

Hindu 23.7

CONSTITUTION OF INDIA

PROVISION FOR UPPER CHAMBERS

DRAFTING COMMITTEE'S REPORTED DECISION

NEW DELHI, July 22.

The Drafting Committee of the Constituent Assembly this morning discussed the financial provisions of the Draft Constitution with Provincial and State Premiers and Provincial Finance Ministers. Dr. B. R. Ambedkar presided.

The provision for the constitution of Upper House in the Provinces, included in the Draft Constitution, is likely to be dropped and it will be left to the future Parliament to decide on this question, after the Constitution comes into force, it is learned.

The Commerce Minister, Mr. K. C. Neogy, officiated for the Finance Minister, Dr. John Matthai.

The Premiers of the Provinces, the Mysore Premier, Mr. K. C. Reddy, the Madhyabharat Premier Mr. Vijayavargiya, the Rajasthan Premier Mr. Hiralal Shastri, the Saurashtra Premier Mr. U. N. Dhebar, the Law Minister of Patiala and East Punjab States Union Mr. Laxman Das, the Finance Minister of Bombay, Mr. Y. L. Mehta, the Bihar Finance Minister, Mr. Anugrahanarain Sinha, the Finance Minister of the Central Provinces, Mr. S. V. Gokhale, the Madras Finance Minister, Mr. Gopala Reddi, the Finance Minister of Assam, Mr. Mehdi and the East Punjab Finance Minister, Mr. Gopichand Bhargava, participated in the discussions.

The Prime Minister, Pandit Nehru, and the Minister for Industry and Supply, Dr. Shyama Prasad Mookherjee, were present for some time. Mr. N. V. Gadgil, Minister for Works, Mines and Power, attended throughout.

It is understood that representatives from the Provinces urged a greater share in the Centre's revenue. It was generally agreed to set up as early as possible a Finance Commission to enquire into the subject of distribution of revenues.

FINANCIAL PROVISIONS

The Drafting Committee, it will be recalled, had already incorporated the recommendations of the Expert Finance Committee and thought it best to retain the status quo in regard to the distribution of revenues for a period of five years, at the end of which a Finance Commission was to have been set up to review the situation. According to present indications such a Commission might be appointed very shortly.

Certain contentious matters, such as the levy and collection of Sales Tax, has been postponed pending the arrival of the Finance Minister, Dr. John Matthai.

In regard to Sales Tax, it is understood, the Drafting Committee had suggested certain uniformity in its levy and collection, probably by the Centre, and then to be distributed to the Provinces. The present method of taxation militated against free inter-State commerce, a principle agreed to by the conference, and led to a multiple levy of tax. It was pointed out that the consumers had to bear the burden. The question will be discussed at a further session of the conference.—PTI.

LEVY OF DUTIES ON SALT

At the meeting of the Provincial Premiers and Finance Ministers and the Drafting Committee to-day, a decision is understood to have been taken not to impose any statutory ban on levying duties on salt, which was sought to be incorporated in the Draft Constitution under Clause (1), Article 253, which provided that "no duties on salt shall be levied by the Union".

The Clause is now expected to be withdrawn when the relevant Articles will come up for discussions in the Constituent Assembly.—UPI.

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National Herald

UNION AND UNITS: REVIEW

The scant attention paid to constitution-making, except among leading members of the Constituent Assembly, helps repeated changes in the draft constitution and vital departures from well-known principles to be made without any public notice. The provincial premiers and the Drafting Committee have met to consider compromises between union power and provincial autonomy, as scheduled, but it would not be correct to assume that the consideration has been as dispassionate as it could have been if sound constitutional principles were the only guide. It is plain that in the present discussions recent developments, economic and political, have played a great part. The conflicting incidence of the sales tax and the imposition, in the face of public opposition, of absurd taxes unknown in the history of taxation have revealed that if provincial development has to depend on provincial revenue progress is bound to be tardy when provinces adhere to pre-freedom maxims with fanaticism. The centre has little enthusiasm for prohibition and has shown little interest in zamindari abolition. Provinces are bound to feel the limitation of financial resources irksome unless the centre is able to look after the overall finances and development or makes provincial autonomy real and effective in the financial as in the other fields. The proposal to remove the constitutional ban on salt duty indicates the dropping of principles dear to the Congress for many years for the sake of getting round the financial stringency. But the people will not fail to be struck by the contradiction of the Government dropping the salt tax and then bringing it back for whatever reason.

We find that the causes underlying the demand of the provinces for a larger share of the central revenues are being ignored. The Drafting Committee incorporated the recommendations of the Expert Finance Committee and thought it best to retain the status quo in regard to the distribution of revenues for a period of five years at the end of which a finance commission was to review the situation. It is now learnt that the appointment of such a commission may be expedited. While contentious matters like the sales tax are to be finally disposed of in consultation with Dr. Matthai, it is necessary to emphasize that the responsibility of provincial Governments for the primary needs of the citizen must be borne in mind and that it would be an unsound principle to cripple the provinces financially. The centre seems to assume too much for itself without being able to discharge the burden. For instance, Dr. Tara Chand's outline of the Central Government's plan for introduction of compulsory basic education in 16 years for the age group 6 to 14, in spite of the proposed central allocation of 30 per cent of the expenses, illustrates the unconcern shown for provincial effort on which depends the success of any such scheme. The centre might issue a writ, with or without the help of advisory committees, but it is the provinces that will have to execute it. Tight central guidance assumes, besides encroachment on provincial autonomy, a one-party state with a unified programme. The principle that inter-provincial interests in matters like economic development should guide the allocation of financial resources should be borne in mind, if central dictation and a system of doles are to be avoided. The reshuffling of the states' list in favour of the union list and the concurrent list should be carefully examined if uniformity is not to be a mere formal virtue, though the lists were intended to be tentative by the Drafting Committee.

More important considerations seem to have influenced the Drafting Committee and the provincial premiers. The unrest and disorder in border provinces and the dangers it may spell have led to a review of the meaning of emergency for the purpose of suspending ministerial rule and substituting it with the governor's or the centre's rule. The draft constitution empowers the governor in certain circumstances to issue a proclamation suspending certain provisions of the constitution. He can do so only for a period of two weeks and is required to report the matter to the president of the union. Upon receipt of the report the president may either revoke the proclamation or issue a fresh proclamation of his own the effect of which will be to put the central executive in the place of the state executive and the central legislature in the place of the state legislature. The state concerned will become a centrally administered area for the duration of the proclamation. We have here the section 93 regime of the 1935 Act. But the president has to fulfil certain formalities with regard to the legislature. It is now proposed to amend articles 278 and 188 to allow the governor or, in other words, the president of the republic through the governor to take over the administration of a province in case of grave emergency without formalities. According to this, the centre will be the judge of the situation. Obviously the president or the governor will be advised by the centre and it is the government's view that will prevail. This provision should be judged in the light of the executive power given to the centre in respect of concurrent subjects, for which power may be conferred by the parliament on the union authorities, or the extended control now sought to be given over preventive detention and in regard to the central intelligence bureau to the centre. It seems to be the Home Ministry's view that these powers will be necessary in view of disruptive activities in some parts of the country and the necessity of prompt intervention. Apart from the power sought by the centre for raising an armed constabulary as distinct from the armed forces, for the protection of the country, for which we see little warrant and little use, the power to take over provincial administration should not be cursorily dismissed as something normal. The sovereign democratic republic is to be no doubt a union and the safety of the union has to be judged by the union centre. It might seem a harmonious arrangement if the same party is in power in the provinces and at the centre, but it is the very fear of disharmony in the case of conflict of parties that is behind the present stampede towards centralisation. That is why it is all the more imperative that we should know the implications. In one border province at least there is the danger of disturbances and disruption. If these are encouraged by any party advocating extreme dissidence there is implicit in it incipient secession. The Indian leaders seem to be contemplating possible repetition of the developments which led to the American Civil War. The proposed amendments in the draft seek to prevent it, for as soon as a province or a provincial government is in a dangerously recalcitrant mood the centre can come down upon both. Whether such powers are desirable depends on what view one takes of the situation envisaged. For a state still in the making, any safeguards may seem justifiable, but it would be premature to say whether the contemplated provisions are democratic or anti-democratic.

28/7/47

Amrita Bazar Patrika

CITIZENSHIP

THE PROVISION RELATING to citizenship incorporated in Articles 5 and 6 of the Draft Constitution is admittedly unsatisfactory. Under Article 5 (a) "every person who or either of whose parents or any of whose grandparents was born in the territory of India as defined in this Constitution and who has not made his permanent abode in any foreign State after the first day of April, 1947" is a citizen of India. The "territory of India as defined in this Constitution" means, of course, that portion of this sub-continent which is not included in Pakistan and independent States (Nepal etc.). Therefore any "person who or either of whose parents or any of whose grandparents" was not born within this truncated India is not a citizen of India *by birth*. For a specified category of such persons provision is made for citizenship *by domicile*. Under Article 5 (b) "every person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution, shall be a citizen of India . . . .". In this clause no distinction is made between those areas which were formerly integral parts of India (East Bengal, West Punjab, etc.) and countries which had no geographical or political connection with India (Ceylon, Malaya). Thus, a Singapore man is exactly in the same position as a Dacca or Lahore man. This is a legalistic attempt to obliterate history. Then, again, in order to prove that he "has his domicile in the territory of India as defined in this Constitution" an applicant for citizenship must declare before a District Magistrate in India that he desires to acquire a domicile in India and also prove that he has lived in India for at least a month before that declaration. These provisions apply to the state of things existing at the commencement of the new Constitution. After the commencement of that Constitution "Parliament may, by law, make further provision regarding the acquisition and termination of citizenship. . . ." (Article 6).

The Drafting Committee "thought it necessary that, in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union, whether by birth, or descent, or domicile." No theoretical objection can be taken to this principle, for citizenship divorced from "territorial connection" may lead to many complications. But in applying the principle to the so-called "displaced persons" who have come, and are coming, to India as a result of the partition of the country, arrangements should be made to avoid formalities as far as possible. Problems affecting the vital interests of millions of unfortunate men and women should not be complicated by legalistic considerations. Had the solution suggested by the Drafting Committee recommended itself to the Constituent Assembly it would have been formally accepted long ago. But the constitution-makers felt, and rightly felt, that substantial modifications were necessary. So consideration of Articles 5 and 6 was postponed.

It is reported that a new formula to solve the question of acquiring Indian citizenship by evacuees from Pakistan and other Indians living outside the Indian Union has been evolved by the Drafting Committee. A person coming to the territory of the Indian Union after April, 1947, shall be a citizen of India, provided he makes a declaration within a specified period stating that he desires to acquire a domicile in the Indian Union. As regards Indians living outside the territory of the Indian Union,—in countries like Burma, Malaya, Ceylon, South Africa,—it has been decided, so runs the report, that those amongst them who file a declaration stating their desire to remain citizens of India will be recognised as citizens. Persons coming to the Indian Union with the intention of living here permanently after the commencement of the new Constitution will be governed by Article 6, that is, the conditions of admitting them to citizenship will be laid down by Parliament. These provisions seem to be simpler than Article 5 of the Draft Constitution; but much depends on drafting. We hope the Drafting Committee will re-write Article 5 in such a way that it does not become a "lawyers' paradise". As much latitude as possible should be given to the emigrants from Pakistan, and the constitutional provision should be clear and decisive.

In this connection it is our regrettable duty to refer to a pamphlet entitled "A Plea for Dual Citizenship: Appeal to Members of the Indian Constituent Assembly" prepared and circulated by Ahom Jatiya Mahasabha of Assam. The Mahasabha wants that "there should be a sort of dual citizenship in the future Constitution of India—an all-India or Federal citizenship, and a provincial or State citizenship like that in the original constitution of the United States." This strange proposal is a logical corollary of the Mahasabha's conception of the unity of India. We read in the above-mentioned pamphlet:

> India has never been a country or state of that kind (i.e., like England or France) . . . the provinces or States should be given full autonomy and their local people special rights and privileges . . . . Otherwise there are bound to be clashes amongst the different provincials . . .

The wound inflicted on the country by separatist tendencies is still fresh. Every moment we are feeling the imperative need of unity. The Draft Constitution is being modified in order to confer larger powers and responsibilities on the Centre. In this context the Ahom Jatiya Mahasabha advocates disintegration through "dual citizenship" and provincial autonomy. It is not enough to take no notice of such perverted views. It is necessary to nip them in the bud. It is necessary to emphasize again and again that the country is one and must remain one.

The Hindustan Times

SATURDAY, JULY 30, 1949.

THE LAST LAP

The mid-summer session of the Constituent Assembly, which begins this morning will, we hope, complete the detailed consideration of the Draft Constitution before autumn. This will enable experts to perfect the draft technically and present it for adoption in time for the Indian Republic being brought into being on January 26, 1950. On occasions the process of constitution-making has appeared needlessly slow, and certainly the original and revised estimates of the time the task would take have been repeatedly belied. But delay has not been altogether without its compensations. Changed circumstances and calm reflection have led to radical changes in the Draft. Provisions for a stronger Centre and a truly patriotic solution of the problem of minorities have been made possible only by the march of time which has brought the constitution-makers face to face with realities. Other issues of a controversial nature, such as distribution of sources of revenues between the Centre and the provinces, have also been resolved as a result of the discussions held with provincial Premiers and Finance Ministers, thus making the task of the C.A. easy.

Unfortunately, no attempt has been made to come to a decision on subjects which have popular appeal, such as the National language, National anthem and an appropriate name for the country. An easy way of escape for the leaders would be to throw the responsibility on Parliament to be elected under the new Constitution. But that would mean a confession of bankruptcy of ideas or lack of contact with the people. After all, the masses also should feel the glow of freedom on the day the new Constitution is born. They can do so only through symbols that can make an appeal to their sentiments. It is always the privilege of the authors of a revolution to make such decisions, translating the emotions of their people into a constructive force. In particular, it is important that the issue of *lingua franca* should not be shirked. We do not think there is such a wide gap between the views recently expressed in a joint statement by Kaka Kalelkar, Acharya Vinoba Bhave and Mr Mashruwala and by their critics, Dr S. K. Chatterjee and others. They all agree on the need for a commn national language and also that the Nagari script should be used and that the source from which additional words are to be drawn should be Sanskrit. Whether the national language is called Hindi or Hindustani may well depend on the name given to the country, but the suggestion that official notifications and proclamations should be published in Urdu also is neither politic nor practical when it is agreed that there should be one national language. There should, however, be no difficulty in agreeing, as a temporary measure, to Urdu being recognized for applications and representations made by the public and arrangements being made for getting them rendered into the national or regional language concerned. But this is more a matter for administrative action than for any mention in the Constitution.

Two hundred and forty-five Articles of the Draft Constitution out of a total of 315 have already been disposed of, and the Constituent Assembly's session beginning tomorrow does not have a formidable agenda if only the number of provisions were taken into account. Actually, however, the next fortnight may be more taxing for the constitution-makers than any previous session. Allocation of powers and revenues between the Centre and the Units, the future of tribal people in Assam and elsewhere, qualifications for citizenship, including provision for displaced persons and Indians overseas, the administrative set-up of the Centrally-controlled areas, composition of Upper Houses and a number of other problems have been considered and generally acceptable solutions found for them. Final touches to the draft provisions on these subjects may be given at meetings of the Congress Party or in the House itself. But none of them, it may be hoped, will lead to prolonged controversy. There is, however, one issue, more important than others which should give no cause for debate. The decision to bring States like Mysore, Hyderabad and Kashmir and the States Unions into line with the provinces is sure to be enthusiastically welcomed. By amendments in the relevant Articles, including those already passed, it is proposed to confer uniform status on all the units of the Unions. Both as regards internal administration and their relation with the Centre the States and States Unions will under the new Constitution be on the same footing. Thus the Constituent Assembly will complete the process of integration of the whole country into a single, homogeneous unit, started two years ago by Sardar Patel. This fact alone should entitle the constitution-makers to the people's gratitude.

The Sunday Amrita Bazar Patrika

FRAMING THE CONSTITUTION

THE CONSTITUENT ASSEMBLY met yesterday after the summer recess to conclude the second reading of the Draft Constitution. It is very doubtful whether this stage of constitution-making will be completed by the 15th August next, the target date fixed for the purpose. Apart from the so-called non-controversial clauses, which are not likely to take much time, there are several controversial points on which acute differences of opinion are known to exist. For instance, no final decision has yet been taken regarding the name of the country. Shall we accept the name given by foreigners, or shall we go back to the past in search of a name closely associated with our historical and cultural traditions? It is primarily a question of sentiment, for material interests are not at stake. It does not matter whether we call our country "India," or "Bharatavarsha"; our political or economic position is not affected in any way. But sentiment certainly plays a part, often a decisive part, in national evolution. Nationalism often takes a revivalistic shape. Look, for instance, at the transformation of Persia into Iran, of Siam into Thailand, of Serbia into Yugoslavia. Pan-Slavism, which played an important role in European history in the last quarter of the nineteenth century, was a revivalistic movement drawing its inspiration from the memories of the lost greatness of the Slav race. Even Communist Russia idealises the past: her historians are re-writing the character and achievements of creative autocrats like Peter the Great. These examples show how, beneath the veneer of modern civilisation—its cold logic, its professedly materialistic interpretation of life, its apparent challenge to meaningless softness,—there is that primitive longing for the vanished past, that dreamy anxiety to recall the dead, which has swayed humanity for countless ages.

There is another unsolved question which stirs our deepest sentiments. The Constituent Assembly has not yet chosen the National Anthem. The claim of *Vande Mataram* is challenged by that of *Jana Gana Mana*. That *Vande Mataram* has become a part of our national history no one can deny. Three generations of men and women have drawn their inspiration from this great hymn to the Motherland. The movement for national liberation has passed through different stages, but *Vande Mataram* has remained a perennial spring of stimulating music. Half a century ago it moved hoary-headed moderates fed on Burke and Mill. Its stirring call found an irresistible echo in the hearts of two generations of so-called terrorists. The votaries of non-violent non-co-operation found in it an abiding source of strength and hope. It conjured up a vision which demanded, and received, absolute surrender and forgetfulness of self. *Vande Mataram* is inseparable from the creative process which has culminated in India's freedom.

There are some amongst us, however, who think that the sombre rhythm of *Vande Mataram* is not meant for everyday use. It is a great hymn to be sung on great occasions. Its language is archaic: its imagery takes us to the half-forgotten past. It demands a solemn spirit of dedication, which may be out of place in, and out of tune with, the conventional formalities associated with a National Anthem under modern conditions. They prefer *Jana Gana Mana*, with its softly vibrating music, its dazzling string of pearl-like words, its appeal to the heart. Its delicate tune can be played easily on modern instruments. Its rhythm is not out of harmony with strange surroundings in alien lands. It will not be easy for our constitution-makers to make a choice. Whatever the final choice turns out to be, India will have a National Anthem worthy of her past traditions and future aspirations.

The question of national language, which the present session of the Constituent Assembly will be called upon to decide, is closely connected not only with sentiments but also with material interests. Whatever language and script may be chosen, the majority of India's population will have to learn an unfamiliar language and an unfamiliar script. That is a difficulty which cannot be avoided, but wisdom and toleration on the part of those whose language will be given the place of honour may take away some of its stings. Providence has made India a country of many languages. Can we not make this variety a source of strength instead of turning it into a source of weakness? Can we not create conditions favourable to the development of regional literatures, while insisting on the minimum amount of linguistic uniformity essential for administrative unity? Can we not wash away some of the barriers between the regional languages by utilising the waters of the common fountain—Sanskrit? These are problems for scholars and literary men, not for politicians. Language is the vehicle of man's deepest thoughts and emotions. There is nothing which a sensitive soul resents more than interference with freedom of expression. Whatever the decision of our constitution-makers may be, that freedom must be left unimpaired.

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Times of India. 30.7.

SECOND READING OF CONSTITUTION

Constituent Assembly Session Opens Today

IMPORTANT ITEMS TO HAVE SMOOTH PASSAGE

From Our Special Representative

NEW DELHI, July 29.

COMPLETION of the second reading of the Draft Constitution is the target for the six-week session of the Constituent Assembly which commences here tomorrow morning with Dr. Rajendra Prasad presiding.

Smooth passage is ensured for a number of important and controversial provisions in the Draft in view of the series of consultations which took place here early this month.

The House is expected to dispose of, in the first instance, such Articles as were left over during the last session, as these tie up all the chapters whose consideration has been completed.

These clauses relate to the Secretariats of Parliament and of States' Legislatures, salaries of judges, abolition or creation and composition of Legislative Councils in units, emergency provisions and the powers of the Auditor General of India.

Provisions over which no final conclusions have yet been reached, such as certain aspects of the financial relations between the Centre and the Provinces, the conditions of States, the seven Schedules and the question of language, will be taken up at a later stage.

The Drafting Committee have asked Premiers, and Finance Ministers of Provinces and States to send in their alternative suggestions before the second week of August on Articles under dispute such as Sales Tax, taxation on public utility concerns, instruments of instructions to States Governments and allied matters.

It is expected that a new Article after 79 will be incorporated, providing for the establishment of a separate Secretariat for each House of Parliament.

HIGH COURT JUDGES' PAY

The salaries and conditions of services of Judges of the Supreme Court and High Courts are stipulated in the relevant articles in the first schedule. The Chief Justice of the Supreme Court will get Rs. 5,000 and any other Judge, Rs. 4,000. The Chief Justice of the High Court, under the new provisions, will get Rs. 4,000 and any other Judge, Rs. 3,500.

An additional Article is expected to be included after the one providing for the constitution of Upper Chambers in certain provinces. It suggests that Parliament may by law provide for the abolition of a Council where one exists and the creation of a Council where one does not exist in a State, if the Lower House of that State passes a resolution to that effect by a majority of not less than two thirds of members present and voting.

EMERGENCY PROVISIONS

As regards the emergency provisions, some changes are indicated. Among the causes for which the President may declare the existence of a grave emergency, the expression "internal disturbance," will be substituted for "domestic violence."

A new Article is also likely to be added, stipulating that it should be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the new Constitution.

As regards the provisions relating to the failure of the Constitutional machinery in the States, the draft is being changed so as to bring the Indian States and States Unions within their scope by adding the word "ruler" in addition to "governor" in the relevant places.

As regards economic and financial provisions, Article 244 may be changed so that any State may impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, but that there should be no discrimination between goods so imported and goods so manufactured.

Any State can also impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State, as may be required in the public interest. The President's sanction is required for amending the above provision.

DRAFTING COMMITTEE CRITICIZED IN CONSTITUENT ASSEMBLY

DEBATE ON COMPOSITION OF UPPER HOUSES

The Constituent Assembly, which is expected to pass the second reading of India's Constitution by August 15, reassembled on Saturday after six weeks' recess and passed four articles out of the 90 it has still to adopt. After a lively 90-minute debate, in which nine out of eleven speakers criticized the Drafting Committee in varying degrees, the Assembly referred back to the Committee its proposal to leave to Parliament the decision on the composition of Upper Houses of the States of the Union.

The July-August session of the Constituent Assembly of India opened on Saturday at the Constituent Assembly Chamber, New Delhi. Dr Rajendra Prasad presided.

The first article placed before the House by Dr B. R. Ambedkar, Chairman of the Drafting Committee, sought to ensure the independence of the legislature secretariats from executive interference. It was mainly on the line recommended by the Speakers' Conference.

Each House of Parliament, says the new Article 79(A), shall have a separate secretarial staff. Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament. Parliament may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of either House of Parliament. Until the necessary provision is made by Parliament, the President of the Union may, after consultation with the Speaker of the House of the People (Lower House) or the Chairman of the Council of States (Upper House), as the case may be, make rules regulating the recruitment and conditions of service of the persons appointed.

Dr B. R. Ambedkar explained that this procedure had been adopted by the Central Legislature as far back as 1928 or 1929, after a dispute between the Executive Government and President Vithalbhai Patel, but it had not been followed by the various provincial legislatures.

INDEPENDENT SECRETARIAT

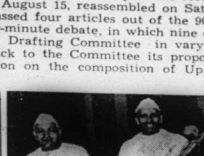
The Conference of Speakers, Dr Ambedkar went on, passed various resolutions insisting that, besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, conditions of service and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. The Committee thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff. The rest of the matter was left to be regulated by Parliament.

Mr H. V. Kamath moved seven amendments, some of them to eliminate "superfluous, redundant, clumsy words. For instance, Mr Kamath asked, why not use the simple words "shall prevent" instead of "shall be construed as preventing"? He wanted Parliament to regulate not only the recruitment and conditions of service of persons appointed but also their salaries and allowances.

Supporting the provision for an independent secretariat, he pointed out that care should be taken in the recruitment of the staff. As in the House of Commons, the chief clerk should be empowered to recruit special staff who would have similar nature, and would be helpful to members.

Mr. Brijesh Prasad pointed out that by the time the Constitution was passed, the need for a separate secretariat was recognized, but he did not like the provisions that the appointment, promotion and other conditions of service should be left to be determined by Parliament. They should be under the regulations of the Public Service Commission. It was necessary that the Speaker should not be vested with powers of patronage and he should be above suspicion, he said.

The House rejected the amendments and adopted the article.



Mr Jaspat Rai Kapur (left) and Mr Kamath walk into the Chamber for the Constituent Assembly session.—Statesman.

RIGHTS OF SUPREME COURT JUDGES

Dr Ambedkar then moved a new article in place of Article 104 regarding salaries and rights of Supreme Court judges.

It provides that the judges of the Supreme Court should be paid such salaries as are specified in the Second Schedule. Every judge should be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension, as might from time to time be determined by or under law made by Parliament and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule. Neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension should, however, be varied to his disadvantage after his appointment.

Dr Ambedkar explained that the original article, excepting the fact that the word "privileges" had been introduced. What those privileges were would be a matter to be discussed when the Second Schedule was taken up by the House.

Pandit H. N. Kunzru moved an amendment stating that the pension allowable to a judge of the Supreme Court should not be less than that which would have been admissible to him if he had been governed by the provisions of the present Constitution. He pointed out that Dr Ambedkar's article provided that the rights of a judge in respect of pension should not be varied to his disadvantage after his appointment. So far as the existing incumbents were concerned, no change would be made in their pensions. He, therefore, wanted that provision for future entrants should also be made.

AMENDMENT OPPOSED

Opposing the amendment, Dr Ambedkar pointed out that the rights of a judge as to his salaries, leave and pension, once he was appointed —those rights which were in accordance with the terms of his appointment—would not be liable to be changed by Parliament. Parliament had been given power to make laws from time to time for changes in salaries and pensions, but it applied only to new judges and would not affect old judges. Thus the principle for which Pandit Kunzru was fighting for had already been introduced in the article.

His second objection to Pandit Kunzru's amendment was that it suggested that federal Court judges should get the same salary and pension to which each one of them would be entitled in pursuance of the present rules, if they were appointed judges of the Supreme Court. He could not accept that proposition. The amendment sought to establish a pension for Supreme Court judges on the basis of the existing salaries of Federal Court judges would be continued. That proposition had not yet been accepted by the House.

After rejecting the amendment of Pandit Kunzru, the House approved Dr Ambedkar's motion substituting a new article for Article 104.

STATES' LEGISLATIVE COUNCILS

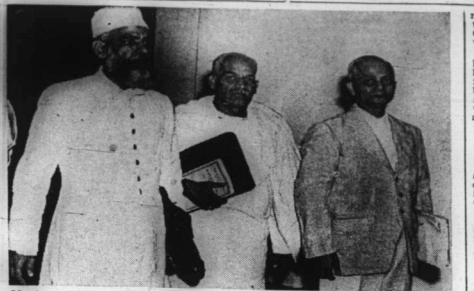
Dr Ambedkar moved a new Article 148-A on the question of abolition or creation of Legislative Councils in States.

The article stated that Parliament might make law to provide for abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passed a resolution to that effect by the majority of the total membership of the Assembly of not less than two-thirds of its members present and voting. Any such law should contain provisions for the amendment of this Constitution as might be necessary to give effect to the provisions of the law, and also might also contain such incidental and consequential provisions as Parliament might deem necessary. No such law should be deemed to be an amendment of this Constitution.

Dr Ambedkar explained that the article provided for two contingencies: (1) for the abolition of the Second Chamber in those provinces which had a Second Chamber at the time of the commencement of the Constitution; and (2) for the creation of a Legislative Council in provinces in which such a Council did not at the commencement of the Constitution there was no Second Chamber. As regards the former, the matter was left to the Lower Chamber which by a resolution could recommend either of the two courses. In order to facilitate quick change in regard to abolition or creation of a Second Chamber, provision was made that such law was not to be deemed to be an amendment of the Constitution. It would obviate the difficult procedure that had been provided for the amendment of the Constitution.

Prof Shibbanlal Saxsena moved an amendment that the Drafting Committee should take into consideration the circumstances which had intervened in the last two years. Many States had been merged with the provinces. Consequently the disparity that might exist in small provinces like Orissa would no longer exist. Further if Article 172, which regulated the question of differences of opinion between Upper and Lower Chambers in the provinces and States, was passed, the question of disparity of strength between Lower and Upper Chambers would lose all its importance and it would be in a position to correspond with various provincial Governments and ascertain their views.

In putting forward these proposals, he contended, the Drafting Committee had not made any serious departure from the principle that had already been adopted. Taking these into consideration, there was nothing for which the Drafting Committee should apologize.



Maulana Hifzur Rehman, new member from Delhi, Kallur Subba Rao (Andhra), and Mr Nichols Roy (Assam) arrive for the reopening of the Constituent Assembly in Delhi.—Statesman.

PRESIDENT'S SUGGESTION

Dr Rajendra Prasad, the President, amid cheers, observed: "I confess to a deep sense of disappointment that the Drafting Committee has not been able to find a solution regarding the composition of a Second Chamber. It is an important matter and in the Constitution itself the composition of the Upper Chamber of Legislature should be laid down definitely. I should have thought that it should be possible to come to some conclusion which should be acceptable to the House as a whole."

The President said he would not blame the Drafting Committee for there had been a good deal of amendments suggested from many points of view and the Committee had found it impossible to reconcile them all. It took the line of least resistance of putting it off till Parliament met and decided the question.

He said: "I may suggest even at this late stage that the question may be referred back to the Drafting Committee (loud cheers) and the Drafting Committee could make another attempt to solve this question and bring before the House a solution of this problem. It is for the House to decide, and I leave it to the House to decide." Loud and prolonged cheers greeted the observations of the President.

Dr. Ambedkar said he had no objection to the article being held over and the House agreed to the consideration of the article being deferred.

PROCEDURE FOR ASSENT TO BILLS

The Assembly adopted Article 163-A, a new article relating to secretarial staff of State Legislatures which was a counterpart to Article 79-A regarding the Speakers' Secretariat at the Centre.

It then took up Article 175 providing for procedure in regard to the assent to Bills passed by a State Legislative Assembly. Dr Ambedkar moved an amendment adding a proviso to the effect that the Government might return a Bill, other than a money Bill, for reconsideration by the Legislature, and if the Bill was passed again, the Governor could not withhold assent to it.

Dr Ambedkar explained that the original article explained that two important provisions: (1) the Governor has right, in his discretion, to return a Bill with a message; (2) right to return the Bill was applicable to all Bills, including money Bills; and (3) right was given to a Governor to withhold a Bill only in those cases where the Legislature of the province was unicameral. It was felt that in a system of responsible government there could be no discretion in the Governor acting in his discretion. The new proviso, therefore, deleted the word "discretion".

Similarly, it was felt that the right to withhold a Bill should not be extended to money Bills. It was also felt that the Governor to return a Bill should not be confined to the provinces where there were unicameral Legislatures. The new proviso had made these three changes.

The House had not concluded consideration of the Bill when it adjourned till Monday.—PTI.

NATIONAL LANGUAGE PROBLEM

Before the Constituent Assembly resumed discussion on the Draft Constitution on Saturday, Seth Govind Das (C.P. and Berar) wanted to know whether the question of national language would be discussed by the House or left to Parliament. He said he had heard it being talked that the language question would be left to Parliament. This was the last session of the Assembly and it was necessary that a date be fixed for discussion of this question, he urged.

Dr Rajendra Prasad, the President, replied that he was not sure whether the national language problem should be left to Parliament to decide would depend on the decision of the House. He thought, therefore, that no further question was necessary. When the article relating to national language came up for discussion, "we shall see to it".—PTI.

ALLEGATION AGAINST ASSEMBLY STAFF

Mr T. T. Krishnamachari asked the President of the Constituent Assembly on Saturday: "Have you any memory any member of your staff to take disciplinary action against members of the Constituent Assembly and punish them by denying them petrol coupons for a particular week? Such action has been taken by an officer of this Assembly against members."

The President, Dr Rajendra Prasad: "It is evident that I could not have given authority like that to any member of my staff. I shall look into the matter."—PTI.

WORLD'S INCOME ESTIMATED AT $531 BILLION

LAKE SUCCESS, July 28.—The world's income in 1948 is estimated to have been $532 billion dollars, the statistical office of the U.N. announced today. It was pointed out that the figure was reached after "preliminary calculations" based on official or semi-official estimates of the various countries' national income.

North America with 240 billion had 45% of the world's income whereas Europe, excluding the USSR, had 140 billion representing 26%.

Official data on the national income of the USSR is not available at present. Experts, however, estimate the national income of the Soviet Union at about 52 billion dollars or slightly below 10% of the world income.

The following is the tale of world income in 1948:

North America, 240 billion dollars (45%).

Europe, excluding USSR, 140 billion dollars (26%).

USSR, 52 billion dollars (10%).

Asia, 58 billion dollars (11%).

South and Central America, 17.5 billion dollars (3.5%).

Africa, 15 billion dollars (3%).

Oceania, 8.5 billion dollars (1.5%).

Oceania 8.5 billion dollars (1.5%).—PTI-Reuter.

American Film Banned.—The Capetown Censorship Board has banned the American film "Home of the Brave" from being shown publicly in South Africa.—PTI-Reuter.

COMMITTEE CRITICIZED IN CONSTITUENT

...MPOSITION HOUSES

...is expected to pass the second ...ugust 15, reassembled on Satur... ...ed four articles out of the 90 it ...minute debate, in which nine out ...Drafting Committee in varying ...k to the Committee its proposal ...n on the composition of Upper

Mr Jaspat Rai Kapur (left) and Mr Kamath walk into the Chamber for the Constituent Assembly session.—Statesman.

separate secretariat was recognized, but he did not like the provisions that the appointment, promotion and other conditions of service should be left to be determined by Parliament. They should be under the regulations of the Public Service Commission. It was necessary that the Speaker should not be vested with powers of patronage and he should be above suspicion, he said.

The House rejected the amendments and adopted the article.

RIGHTS OF SUPREME COURT JUDGES

Dr Ambedkar then moved a new article in place of Article 104 regarding salaries and rights of Supreme Court judges.

It provides that the judges of the Supreme Court should be paid such salaries as are specified in the Second Schedule. Every judge should be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension, as might from time to time be determined by or under law made by Parliament and until so determined to such privileges, allowances and rights as are specified in the Second Schedule. Neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension should however, be varied to his disadvantage after his appointment.

Dr Ambedkar explained that the original article, excepting the fact that the word "privileges" had been introduced. What those privileges were would be a matter to be discussed when the Second Schedule was taken up by the House.

Pandit H. N. Kunzru moved an amendment stating that the pension allowable to a judge of the Supreme Court should not be less than that which would have been admissible to him if he had been governed by the provisions of the present Constitution. He pointed out that Dr Ambedkar's article provided that the rights of a judge in respect of pension should not be varied to his disadvantage after his appointment. So far as the existing incumbents were concerned, no change would be made in their pensions. He, however, contended that provision for future entrants should also be made.

AMENDMENT OPPOSED

Opposing the amendment, Dr Ambedkar pointed out that the rights of a judge as to his salaries, leave and pension, once he was appointed —those rights which were in accordance with the terms of his appointment—would not be liable to be changed by Parliament. Parliament had been given power to make laws from time to time for changes in salaries and pensions, but it applied only to new judges and would not affect old judges. Thus the principle for which Pandit Kunzru was fighting for had already been introduced in the article.

His second objection to Pandit Kunzru's amendment was that it suggested that Federal Court judges should get the same salary and pension to which each one of them would be entitled in pursuance of the present rules, if they were appointed judges of the Supreme Court. He could not accept that proposition. The amendment sought to establish a pension for Supreme Court judges on the basis that the existing salaries of Federal Court judges would be continued. That proposition had not yet been accepted by the House.

After rejecting the amendment of Pandit Kunzru, the House approved Dr Ambedkar's amendment substituting a new article for Article 104.

STATES' LEGISLATIVE COUNCILS

Dr Ambedkar moved a new Article 148-A on the question of abolition or creation of Legislative Councils in States.

The article stated that Parliament might make law to provide for abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passed a resolution to that effect by the majority of the total membership of the Assembly of not less than two-thirds of the members present and voting. Any such law should contain provisions for the amendment of this Constitution as might be necessary to give effect to the provisions of the law, and as might also contain such incidental and consequential provisions as Parliament might deem necessary. No such law should be deemed to be an amendment of this Constitution.

Dr Ambedkar explained that the article provided for two contingencies: (1) for the abolition of the Second Chamber in those provinces which had a Second Chamber at the time of the commencement of the Constitution; and (2) for the creation of a Legislative Council in provinces in which at the time of the commencement of the Constitution there was no Second Chamber. As regards the first contingency, one left to the Lower Chamber, which by a resolution could recommend either of the two courses. In order to facilitate a quick change made either in the Second Chamber, provision was made that such law was not to be deemed to be an amendment of the Constitution and would obviate the difficult procedure that had been provided for the amendment of the Constitution.

Prof Shibbanlal Saxsena moved an amendment stating that 14 days' notice should be given for any such resolution being moved in a State Legislature. He welcomed the provision which enabled the Lower Houses to abolish a Second Chamber.

"RETROGRADE STEP"

Mr H. V. Kamath by an amendment, wanted the deletion of that part of the article which provided for the creation of a Second Chamber in States where there was none. He said that the creation of a Second Chamber was a retrograde and reactionary step.

Mr R. K. Sidhwa, in an amendment, suggested the deletion of the restriction of two-thirds majority for passage of a resolution by a State Assembly on the question of abolition of a Second Chamber.

Sardar Hukum Singh moved for the deletion of the clause which stated that no such law should be deemed to be an amendment of this Constitution. He said it should not be left to the discretion and caprices of Parliament to create or abolish at any time a Second Chamber, a provision for which had been made in the Constitution itself.

Dr P. P. Deshmukh supported the amendment of Mr Kamath, Mr Sidhwa and Mr Shibbanlal Saxena. He pointed out that there was no need for Second Chambers in the provinces, for some of those vested interests like the zamindars, Princes and so-called "stable elements in society and orthodoxy" were fast vanishing.

The House rejected all amendments and adopted the article.

ALLOCATION OF SEATS

Dr Ambedkar moved a new Article 150 leaving it to Parliament to decide the allocation of seats in the Legislative Council (Upper House) of a State, the manner of choosing persons to fill those seats, the qualifications of persons chosen and the qualifications of voters.

The total number of members in the Legislative Council of a State, the article says, shall not exceed 25% of the total number of members in the Assembly of that State, provided that the membership of the Council shall in no case be less than 40.

Dr Ambedkar said the Drafting Committee could not come to a definite conclusion on the composition of the Upper Chamber and hence decided to adopt "the line of least resistance" and leave the matter to Parliament. It was no doubt an anomaly that the Constitution, while prescribing that certain provinces should have a Second Chamber, left determination of the composition to Parliament. But, for the moment, there was no method of resolving it.

Mr Kamath said he could not understand the "new arithmetic" of the Drafting Committee. Supposing a province had 100 members, then, according to the proposal before the House, membership of the Legislative Council of that province "should not be more than 25 or less than 40". He was supported by Mr Nazimuddin Ahmed, who described it as "an arithmetical absurdity".

Prof Shibbanlal Saxena moved an amendment which, he said, would enable intellectuals to enter the Upper House and at the same time introduce a popular element.

Maulana Hifzur Rehman, new member from Delhi, Kallur Subba Rao (Andhra), and Mr Nichols Roy (Assam) arrive for the reopening of the Constituent Assembly in Delhi.—Statesman.

Prof Saxena's amendment suggested that 15% of the members of the Legislative Council should be elected by an electoral college comprising all the members of the district boards in that State; 15% by an electoral college consisting of all the members of the learned professions and specialists in any branch of learning; 10% by graduates; 5% by members of the Senate or the Courts of the various universities; 5% by members of municipal boards; 5% by trade unions; 5% by Chambers of Commerce; 30% by members of the Legislative Assembly; and the remaining 10% nominated by the Governor.

Mr Mahavir Tyagi criticizing the Drafting Committee's proposal to leave the composition of Legislative Councils to Parliament said: "Why should we shove on the responsibility to Parliament and shirk our duty? There has been some tendency to postpone all such points which require some wisdom to decide. When the Constitution is hurried sometimes with frivolous details, is it not the duty of the House to decide such a vital point as the composition of the Council?"

Mr Muniswamy Pillai, Scheduled Caste representative from Madras, wanted an assurance that his community would, under the new procedure proposed by Dr Ambedkar, be given a chance to serve in the Council of a State.

Pandit Lakshmi Kanta Maitra recalled that members from six provinces, namely Bengal, Bihar, the U.P., Madras, Bombay and East Punjab, meeting separately, came to the conclusion that there should be Second Chambers in their respective provinces. He could understand it if the House decided not to have Second Chambers in spite of the decision taken by members from the six provinces. What he could not understand was the proposal to leave their composition to Parliament. He had yet to know of any constitution which did not specify the composition of the Upper House.

"This has not been a happy performance" he commented. The Drafting Committee should have found a way out. This is not only an anomaly but a great lacuna. It is most unjustifiable and a most undignified performance."

DRAFTING COMMITTEE DEFENDED

Prof Ranga, supporting the Drafting Committee's suggestion, said: "On the whole the Drafting Committee has made a wise suggestion to us. Now that the House has decided in favour of establishing a Second Chamber and also in favour of giving special representation to certain categories of people in our society in the Second Chamber, it is much better to leave detailed settlement of this question to Parliament, where we have a more leisurely procedure, so that it would be possible for the members to make their suggestions and get them duly considered by Parliament."

Mr T. T. Krishnamachari, defending the Drafting Committee's proposal, said: "I feel there is no need to apologize for the Drafting Committee not having placed a concrete solution other than the one that is contained in the draft article now before the House. It may be that, in a case like this, second thoughts are the best. After taking into account the opinion of the members of this House, as indicated by the innumerable amendments, the Drafting Committee thought that it should review the position that it had originally taken up.

"One of the basic plans in the scheme envisaged in the original draft was selection of candidates for the Upper House by means of the panel system which was borrowed from the Irish model. We have been led to understand subsequently, both from the first-hand exercience of our Adviser (Sir B. N. Rau), who visited Ireland, and also from the literature that was made available to us that the Irish panel system of selecting members for the Upper House has not proved as successful as it was originally thought it would".

He said he had the greatest respect for Pandit Maitra, but he was afraid Pandit Maitra had "allowed his temper to outrun his usual discretion". Pandit Maitra had not taken into account the difficulties of the Drafting Committee, particularly when the data before it was completely insufficient to make up its mind. It might be necessary to meet different situations existing in different provinces. It was all right for Prof Saxena to allocate percentages but conditions in the United Provinces with regard to district boards, for instance, were not the same as those in Madras.

Mr Krishnamachari believed that, before placing the final draft before Parliament, the Government would appoint a committee to scrutinize the claims of various provinces and that the draftsmen "will have sufficient resources and initiative to vary, if necessary, the terms and types of representation provided for each of the provinces that want an Upper House".

In these circumstances, he felt, Dr Ambedkar's proposal was "the only proper, reasonable and just proposal which can be placed before the House in all honesty without making this House do something which will not be proper and which has been decided in a hasty and haphazard manner".

Mrs Purnima Banerji (U.P.) said that, without details of the composition of the Upper Chamber being placed before the House, "we do find ourselves in a difficulty". For the moment Upper Houses in various provinces represented many vested interests. She was anxious that the new Upper Houses should contain such useful people as men of learning, who did social service, served Harijans and backward classes, and representatives of labour and co-operative associations.

Mr Brijeshwar Prasad (Bihar) who had declared earlier that adult franchise subverted all that was good and noble in Indian civilization, wanted the members of the Upper Houses to be nominated for life by the President of the Union or by the Governor of the State in his discretion. He was "thoroughly opposed" to leaving the composition of Upper Houses to be decided by Parliament. The House might as well entrust the entire work of constitution-making to Parliament. He did not serve that membership of the Upper Houses should be one-fourth of the Lower House. In his opinion, membership of both Houses should be equal.

He agreed that the Upper House should not consist of vested interests, the capitalist classes, the landlords or the satellites of Ministers. "I feel that it should be a body consisting of the wise men of the province" he said. He submitted that a nominated Second Chamber, of his conception would be a "second line of defence" against "the dangers that confront the State and the elements of instability that are growing in this country".

DR. AMBEDKAR'S REPLY TO DEBATE

Replying to the debate, Dr Ambedkar said there were two points of comment which called for a reply, one about disproportion in strength between the membership of Upper and Lower Chambers and the other about Parliament being entrusted with the task of determining the composition of a Second Chamber.

Dealing with the first question, he said the members should take into consideration the circumstances which had intervened in the last two years. Many States had been merged with the provinces. Consequently the disparity that might exist in small provinces like Orissa would no longer exist. Further if Article 172, which regulated the question of differences of opinion between Upper and Lower Chambers in the provinces and States, was passed, the question of disparity of strength between Lower and Upper Chambers would lose all its importance.

Under the article it was proposed not to adopt the same procedure as had been adopted with regard to the two Chambers at the Centre. "What we propose to do", said Dr Ambedkar, "is to permit the view of the Lower House to prevail over the views of the Upper Chamber in a State in certain circumstances. Consequently the Upper House, by reason of its political complexion, should have no possibility of overturning the decisions of the Lower House. I think that disposes of the first point of comment".

The second point, which was strongly urged by Pandit Lakshmi Kanta Maitra, was that Parliament should not be left with the task of determining the strength and composition of Second Chambers. Pandit Maitra felt that the Constituent Assembly should not burke this question, and leave it to Parliament. Dr Ambedkar said the Drafting Committee did make a constructive proposal on the composition of the Upper Chamber in the Constitution itself. Unfortunately, that was not accepted. Consequently the Drafting Committee thought it advisable not to press the particular amendment.

The Drafting Committee should, therefore, be exonerated from all blame being attached to it for its inability to solve the difficulty. It did make an effort to solve it, but it did not succeed. It was presented with over 28 amendments on the subject, containing "a bewildering multiplicity of suggestions and conflicting viewpoints". The movers of the amendments would not recede from their position and come to some common conclusion. It was because of this situation that the Drafting Committee put forward a suggestion which was likely to be acceptable to the majority of the House.

Replying to the criticism that it was inconceivable that a part of the constitution of such an important institution as the Upper Chamber should be left to be decided by Parliament, Dr Ambedkar referred to Article 149, which laid down the principles to govern the delimitation of constituencies. It merely stated that constituencies should not contain more or less than so many members. The actual work of delimiting the constituencies was left to Parliament itself. Unless Parliament passed a law delimiting various constituencies for the Lower House at the Centre, it would not be possible to constitute the Lower House. Similarly, on the question of allocation of seats, the Constitution laid down general principles.

If such important matters of details could be left to Parliament to determine, argued Dr Ambedkar, he did not see why grave objections should be raised for a matter like the composition of the Upper Chamber being also left to Parliament. Further, having regard to the conflicting views before the House, he thought it would be much better for Parliament to take up the responsibility because Parliament would certainly have more time at its disposal than the Drafting Committee and it would be in a position to correspond with various provincial Governments and ascertain their views.

In putting forward these proposals, he contended, the Drafting Committee had not made any serious departure from the principle that had already been adopted. Taking these into consideration, there was nothing for which the Drafting Committee should apologize.

PRESIDENT'S SUGGESTION

Dr Rajendra Prasad, the President, amid cheers, observed: "I confess to a deep sense of disappointment that the Drafting Committee has not been able to find a solution regarding the composition of a Second Chamber. It is an important matter and in the Constitution itself the composition of the Upper Chamber of Legislature should be laid down definitely. I should have thought that it should be possible to come to some conclusion which should be acceptable to the House as a whole."

The President said he would not blame the Drafting Committee for there had been a good deal of amendments suggesting so many points of view and the Committee had found it impossible to reconcile them all. It took the line of least resistance of putting it off till Parliament met and decided the question.

He said: "I would suggest even at this late stage that the question may be referred back to the Drafting Committee (loud cheers) and the Drafting Committee could make another attempt to solve this question and bring before the House a solution of this problem. It is for the House to decide, and I leave it to the House to decide." Loud and prolonged cheers greeted the observations of the President.

Dr. Ambedkar said he had no objection to the article being held over and the House agreed to the consideration of the article being deferred.

PROCEDURE FOR ASSENT TO BILLS

The Assembly adopted Article 163-A, a new article relating to secretariat staff of State Legislatures which was a counterpart to Article 79-A regarding the Speakers' Secretariat at the Centre.

It then took up Article 175 providing for procedure in regard to assent to Bills passed by a State Legislative Assembly. Dr Ambedkar moved an amendment adding a proviso to the effect that the Government might return a Bill, other than a money Bill, for reconsideration by the Legislature, and if the Bill was passed again, the Governor could not withhold assent to it.

Dr Ambedkar explained that the original article contained three important provisions: (1) the Governor has right, in his discretion, to return a Bill with a message; (2) right to return the Bill was applicable to all Bills, including money Bills; and (3) right was given to a Governor for returning a Bill only in those cases where the Legislature of the province was unicameral. It was felt that in a system of responsible government there could be no question of the Governor acting in his discretion. The new proviso, therefore, deleted the word "discretion".

Similarly, it was felt that the right to return a Bill should not be extended to money Bills. Consequently the proviso [illegible] Governor to return a Bill [illegible] not be confined to the provinces where there were unicameral Le-

$531 BILLION

LAKE SUCCESS, Jul... world's income in 1948 is ... have been 532 billion ... statistical office of the U.N. ... today. It was pointed ... figure was reached after ... calculations" based on off... official estimates of the ... tries' national income.

North America with ... 45% of the world's inc... Europe, excluding the U... billion representing 26% ...

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North America, 240 ... (45%).

Europe, excluding US... dollars (26%).

USSR, 52 billion dol...

Asia, 58 billion doll...

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ALLEGAT... ASSEM...

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79.

State Mem. 3f-7.

COMPOSITION OF UPPER HOUSES IN PROVINCES

DISCUSSION IN ASSEMBLY

CRITICISM OF OFFICIAL AMENDMENT

PROPOSAL TO DEFER DEBATE ACCEPTED

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Saturday.—Members of the Constituent Assembly debated for two hours on the first day of the monsoon session this morning an interesting point relating to constitutional propriety.

AFTER a fairly smooth discuss on over four Articles, which the House accepted, serious controversy developed over an official amendment to change Article 150 which deals with the composition of Upper Houses in the provinces.

According to the amendment, Parliament will decide details of composition such as the allocation of seats to various interests, the manner of selection and the qualifications of both voters and candidates.

Explaining this unusual provision, Dr Ambedkar confessed that the proposal was the result of 28 conflicting amendments suggested by members and the Drafting Committee's inability to reach an acceptable decision.

Among the strongest critics of the proposal was Mr Mahavir Tyagi, who suggested that by transferring to Parliament the responsibility for an important decision, the Drafting Committee was "shirking" its duty.

Pandit Lakshmi Kanta Maitra was equally severe in his opposition to the proposed amendment, which he described as "a most unjustifiable and a most undignified performance" and "not only an anomaly but a great lacuna".

Despite strong speeches in defence of the proposal by Prof N. G. Ranga and Mr T. T. Krishnamachari, and Dr Ambedkar's own able support of the amendment the President, Dr Rajendra Prasad intervening, thought that the episode was a disappointing one.

Members cheerfully applauded the President's suggestion that the Article be held over for reconsideration by the Drafting Committee and the controversy ended by Dr Ambedkar's acceptance of the suggestion.

Although not on today's agenda, the question of India's national language received attention through an early inquiry by Seth Govind Das if the issue would be decided this session or left to Parliament.

He was told by the President that the question might be asked when discussion took place on the relevant Article in the Constitution.

(Agency report on page 7; See Editorial comment also page 9)

ASSEMBLY RESUMES DISCUSSION

QUESTION OF SECOND CHAMBERS

(FROM OUR CORRESPONDENT.)

NEW DELHI, July 30.

The Constituent Assembly commenced what is generally believed to be the last session for the second reading of the Draft Constitution. In businesslike fashion the House adopted without much discussion three Articles after fixing the salary of the Judges, the second and third establishing separate Secretariats for each House of Parliament and for Legislatures in States.

A great part of the day was taken up in consideration of the two new Articles relating to Upper Houses in the States. One Article vested in Parliament the power to create or abolish Upper Houses in States if the Legislative Assembly of the State passed a resolution to that effect. But real controversy arose over another Article which also proceeded to leave it to the discretion of Parliament to determine the composition of the Upper Houses in the States which desire to have them. This provision was strongly opposed by a number of speakers including Pandit Lakshmikanta Maitra, Dr. Punjab Rao Deshmukh and Srimati Purnima Banerjee.

Dr. Ambedkar and Mr. T. T. Krishnamachari defended the Article on the ground that the "principle of flexibility" of amendments which admitted of no compromise obliged the Drafting Committee to leave the matter for final decision by Parliament.

When the House decided to vote on the Article, the President, Dr. Rajendra Prasad, conferred on the House an appointment at the inability of the Drafting Committee to arrive at a reasonable compromise on the points under debate. The President thought that even though the Drafting Committee was faced with a number of amendments it should be possible to reconcile opposing views. He urged that instead of dropping the subject in that stage the Drafting Committee should make another attempt to reach a decision. The President's appeal was greeted with loud cheering from all sections of the House which agreed to the Drafting Committee reconsidering the subject. The House will meet again on Monday.

NATIONAL LANGUAGE

Before the Assembly resumed discussion on the Draft Constitution this morning, Seth Govind Das (C. P. and Berar) wanted to know whether the question of the national language of India would be discussed by the House or left to the Parliament.

He said that he had heard it being talked that the language question would be left to the Parliament, Seth Govind Das added that this was the last session of the Assembly and it was necessary that a date be fixed for discussion of this question.

Dr. Rajendra Prasad, President of the Constituent Assembly, replied that the question whether the national language problem should be left to the Parliament to decide would depend on that decision of the House. He thought, therefore, that no further question was necessary. When the Article relating to the national language came up for discussion, he added, "we shall see to it."

SECRETARIAT FOR LEGISLATURES

The first Article placed before the House by Dr. B. R. Ambedkar, Chairman of the Drafting Committee was to ensure the independence of the Legislatures Secretaries from executive interference. It was mainly on the lines recommended by the Speakers' conference.

Each House of Parliament says the new Article 79 (A), shall have a Secretariat. The Article provided that nothing in this Clause shall be construed as preventing the creation of posts common to both Houses of Parliament. The Parliament may by law, regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of either House of Parliament. Until the necessary provision is made by the Parliament, the President of the Union may, after consultation with the Speaker of the House of the People (Lower House) or the Chairman of the Council of States (Upper House), as the case may be, make rules regulating the recruitment and conditions of service of persons appointed.

Dr. B. R. Ambedkar explained that this procedure had been adopted by the Central Legislature as far back as 1925 and that after a dispute between the Executive Government and President Vithalbhai Patel, it had been followed by the various

(Continued from page 1)

of a Judge nor his rights in respect of leave of absence or pension should, however, be varied to his disadvantage after his appointment.

Dr. Ambedkar explained that the Article was almost the same as the original Article, excepting the fact that the word "privileges" had been introduced. What those privileges were would be a matter to be decided when the Fourth Schedule was taken up by the House.

Pandit Bridhyanath Kunzru moved an amendment stating that the pension allowable to a Judge of the Supreme Court should not be less than that which would have been admissible to him if he had been governed by the provisions of the present Constitution. He pointed out that Dr. Ambedkar's Article provided that the rights of a Judge in respect of pensions should be safeguarded in any disadvantage after his appointment. So far as the existing incumbents were concerned, no change would be made in their pensions. He, however, contended that appointments in future entrants should also be made.

Opposing the amendment Dr. Ambedkar pointed out that the rights of a Judge as to leave, his pension and allowances from the time he was appointed—those rights which were so accepted—would not be affected by appointment—would not be liable to be changed to the disadvantage. The Parliament had been given power to make laws from time to time for changing the leave and pensions, but it applied only to new Judges. It would not affect the old Judges. Thus the principle for which Pandit Kunzru was fighting for had already been introduced in the Article. His second objection to Pandit Kunzru's amendment was that it suggested that the Federal Court Judges should get the same salary and pension to which each one of them would be entitled in pursuance of the present rules, if they were appointed Judges of the Supreme Court. He could not accept this proposition. The amendment sought to put the Federal Court and Supreme Court Judges on the basis that the existing Federal Court and Supreme Court Judges would be continued. That proposition he could not accept on the floor of the House.

After rejecting the amendment of Pandit Kunzru, the House approved Dr. Ambedkar's amendment substituting a new Article for Article 104.

LEGISLATIVE COUNCILS

Dr. Ambedkar moved a new Article 148-A on the question of the abolition or creation of Legislative Councils in States.

The Article stated that Parliament might, by law, provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passed a resolution to that effect by a majority of the total membership of the Assembly of not less than two-thirds of the members present and voting. Any law made under the aforesaid provisions for such amendment of this Constitution as might be necessary to give effect to the provisions of the law and also contain such incidental and consequential provisions as the Parliament might deem necessary. No such law should be deemed to be an amendment of this Constitution.

Dr. Ambedkar explained that the Article provided for two procedures, one for the abolition of the second chamber in those Provinces which had a second chamber at the time of the commencement of the Constitution, and (2), for the creation of a Legislative Council in the Provinces where at the time it would depend on that of the Constitution there was no second chamber. In the latter case the Legislature was left to the lower chamber, which by a resolution could recommend either of the two courses. In order to facilitate the latter procedure it was made clear in regard to abolition or creation of a second chamber, provision was made that such law was not to be deemed as an amendment of the Constitution. It would obviate the difficult procedure that had been provided for the amendment of the Constitution.

Mr. Mohanlal Saksena moved an amendment stating that fourteen days notice should be given for any such resolution being moved in the State Legislature. He welcomed the provision which enabled the lower houses to abolish a second chamber.

Mr. H. V. Kamath, by an amendment, wanted the deletion of that part of the Article which provided for the creation of the second chamber in the States where there was none. He said that the creation of a second chamber was a retrograde and reactionary step.

Mr. R. K. Sidhwa, by an amendment, objected to the provision for a second chamber by a two-third majority of the resolution by a State. The question of abolition or [illegible] was a matter for the people of the State and not for the Assembly. He was glad that the Drafting Committee had taken note of the feeling of the country. He said that a legislative Assembly should not be fettered by the provisions relating to the procedure of a two-third majority for the adoption of such a resolution.

Sardar Hukum Singh moved for the deletion of the clause which stated that it should not be left to the discretion and prejudices of Parliament to create or abolish at any time a second chamber, a provision which was made in the Constitution itself.

Dr. B. R. Ambedkar supported the view that the provision in favour of the creation of a second chamber in the provinces where it did not exist, was an anachronism.

Mr. Jaspat Roy Kapoor said that the provision of a two-thirds majority was necessary in the interest of the country as otherwise by a snap vote, without notice, a Legislative Assembly would be enabled to abolish a second chamber.

Mr. Brajeshwar Prasad pleaded for second chambers in the interest of general political conditions and the possibility of the election unduly influencing which he said was "a leap in the dark" and which was fraught with a danger to the stability of the State".

He said that a second chamber was very useful for all purposes at this stage of political development in the country.

The House rejected all amendments and adopted the Article.

ALLOCATION OF SEATS

Dr. Ambedkar moved a new Article 380, leaving it to the Parliament to decide on the allocation of seats in the Legislative Council of a State, the manner in which the method of choosing persons to fill those seats, the qualifications of persons to vote and the qualifications of voters.

The total number of members in the Legislative Council of a State, the Article states, shall not exceed one-third of the total number of members in the Assembly of that State. The number of members in each of the Council shall in no case be less than 40.

Dr. Ambedkar said that the Drafting Committee was unable to arrive at any conclusion as to the composition of the Upper Chamber. Supposing a provincial Legislature decided to have a second chamber, the principle to be followed in the composition of the membership of the Legislative Council was very controversial. It was not less than 40. He was supported by Mr. Nazirudin Ahmed who said that it was "arithmetical absurdity."

Prof. Saksena (United Provinces) objected to the principle that the Parliament should be left to decide the Constitution. Once the House decided to adopt the principle that there should be a second Chamber, it should limit its edge by laying down the principles according to which the Constitution.

Mr. Saksena moved an amendment which, he said, would enable intellectuals to enter into the Legislature and at the same time introduce a popular element. Intellectuals, he said, were not adequately represented in Legislatures generally did not come forward to stand for election and his amendment it would be possible to secure their representation.

PROF. SAXENA'S AMENDMENT

Prof. Saxena's amendment suggested 15 per cent of the seats in the Legislative Council should be elected by an electoral college, consisting of the members of the District Boards in that State, 15 per cent by graduates, 15 per cent by the members of the learned professions and specialists, 15 per cent by labour, 10 per cent by graduates, five per cent by the various Universities, five per cent by the members of the Indian Chamber of Commerce and 10 per cent by members of the Legislative Assembly, the remaining 10 per cent nominated by the Governor.

Mr. Mahavir Tyagi (United Provinces), criticising the amendment, suggested instead to leave the composition of Legislative Councils in the hands of the Parliament. He should we shove on the responsibility to the Parliament and shirk our duty? There has been some tendency to postpone all such questions. We must have the courage to decide. When the Constitution was framed, many questions were obvious decisions, but it was not the duty of the House to decide on all of them. What was the composition of the council?" he asked.

Mr. Jaipal Singh (Scheduled Caste representative from Madras) wanted an assurance that the nomination of members under the new procedure proposed by Dr. Ambedkar would not even a chance for services of State.

Pandit Lakshmikanta Maitra (West Bengal) recalled that members from six provinces, namely, Bengal, Bihar, United Provinces, Madras, Bombay and East Punjab, meeting separately decided that there should be Second Chambers in their provinces. He could understand if the House decided not to have Second Chambers at all, but to leave the matter to the members from the six provinces to decide was not understood. He appealed to leave their [illegible] to know of any constitution which specify the composition of the Upper "This has not been a happy period he commented. The Drafting Committee should have found a way out. The only an anomaly but a great lack of a most unjustifiable and most unperformance."

Prof. Ranga (Madras), supporting Prof. Saksena's suggestion said that the whole the Drafting Committee has a wide experience to us. Now the House has decided in favour of ex-

people as men of learning, persons who did social service, nominated lists and Backward Classes and representatives of labour and co-operative associations.

Mr. Brajeshwar Prasad (Bihar) who had moved an amendment to adult franchise advocated that women should have in Indian the Upper Chamber. He suggested for life by the President of the Union or by the Governor of the State in his discretion.

Mr. Prasad was "thoroughly opposed" to the idea of a second Chamber. The question to be decided by Parliament, The House might leave the matter to the Parliament of Constitution-making to Parliament. He did not like the proposal that the Upper House should be one-fourth of the Lower House, adult franchise should be introduced, both Houses should be equal.

He said that the Upper House should not consist of vested interests, the capitalist classes, the landlords or the satellites of Ministers. "I feel that it should be a body consisting of the wise men of the province," he said. "The dominant theme of Indian history has been that it has been ruled not by wise men—our law-givers were not legislators but conservatives or democrats. Under the present circumstances it is difficult to find a non-political body and we can approximate to that idea.

Mr. Prasad opposed the second Chamber in principle. The conception would be the dangers that confront the State and the people in the future if we persisted in this country."

DR. AMBEDKAR'S REPLY TO DEBATE

Replying to the debate, Dr. Ambedkar said that there were two points of view expressed in the House in regard to the Article about the disproportion of strength between the Upper and other houses in the Chambers and the difficulty with the task of determining the composition of a Second Chamber.

Dealing with the first question, Dr. Ambedkar said that the House should take into consideration the circumstances which led to the Second Chamber had two years. Many States had been merged with the Provinces and there was disparity that might exist in small provinces like Orissa and Assam and in the case of Article 172, which regulated the question of disparity in strength between the Upper and Lower Chambers in the Provinces, the Drafting Committee left discretion or disparity in strength between the two Houses. The Drafting Committee did not regard this as important.

Dr. Ambedkar said that it was proposed not to adopt the same procedure as had been adopted in the case of the Second Chamber at the Centre.

"I am not going to propose to do", said Dr. Ambedkar, "is to permit the view of the Lower Chamber to prevail over the views of the Upper Chamber in a State in certain matters. The Upper Chamber is a House by reason of its political complexion would have to go to extraordinary lengths in the decisions of the Lower House. I think that is a thing which we should not do in the Constituent Assembly.

The second point which was strongly urged by Pandit Lakshmikant Maitra was that the Parliament should not be left alone with the task of determining the strength and composition of the Second Chamber. He felt that the Constituent Assembly should not shirk its responsibility in regard to it to Parliament.

Dr. Ambedkar said that the Drafting Committee did make a constructive proposal in regard to the composition of the Upper Chamber in the Constitution itself, unfortunately that proposal was not accepted in places. Consequently the Drafting Committee thought it advisable not to commit the particular amendment. The Drafting Committee felt that the House was concerned from all the blame being attached to it for the failure of the Second Chamber. They did make an effort to solve it, but they did not succeed.

Replying to the criticism that it was inconceivable that a portion of the Constitution should be left to constitution a portion of the Upper Chamber should be left to be decided by Parliament, Dr. Ambedkar referred to Article 149 which laid down the principles for the delimitation of constituencies. It merely stated that constituencies should as much as possible contain a specified number of members. The House, he said, could not have expected that it was left to Parliament to decide. Parliament passed a law delimiting various constituencies for a Lower House at the Centre, it would not be possible to consider in the Lower House. Similarly on the question of allocation of seats, the Constitution at the present stage of the proceedings such important matters of details could be left to Parliament to determine, argued Dr. Ambedkar, he did not see why grave objection should be raised to the Article like the composition of the Upper Chamber being also left to Parliament.

Further having regard to the conflicting views in the House, he thought it would be much better for Parliament to take up the responsibility because Parliament would certainly have more facilities at its disposal than the Drafting Committee and it would be in a position to correspond with various Provincial Governments and ascertain their views. In putting forward these proposals, he contended, the Drafting Committee had not made any serious departure from the principle that had already been adopted. Taking these into consideration, there was nothing for the Drafting Committee to apologise.

Dr. Rajendra Prasad, President, observed: "I confess a deep sense of disappointment that the Drafting Committee has not been able to find a solution to bridge the composition matter and in the gap between the members. It is an important matter in the Constitution itself the composition should be Upper Chamber of the Legislature should be such that it should be capable of inspiring confidence in the people and have thought that it should be possible to come to some compromise which should be acceptable to the House as a whole.

The President said that he would not blame the Drafting Committee, for there had been a number of amendments suggesting so many viewpoints and he did not see how it could be possible to reconcile all these. They could put off till the Parliament met and decided the question. But at this late stage that the question may be referred to the Drafting Committee (Loud cheers). And the Drafting Committee could make another attempt to solve this question and bring before the House a solution of this problem. It was for the House to decide and I leave it to the House." Loud applause followed and cheers greeted these observations of the President.

Dr. Ambedkar said that he had no objection to the Article being held in and the House then agreed to the consideration of the Article being deferred.

The Assembly next adopted Article 167 (A), a new Article relating to the Secretarial staff of State Legislatures which was a counterpart to Article 79 (A) regarding the Speaker's Secretariat at the Centre.

Article 175 relating to the joint sitting of both the Houses of Legislature in States, was taken up over at the suggestion of Mr. T. T. Krishnamachari.

GOVERNOR'S ASSENT TO BILLS

In Article 175, which dealt with the assent by the Governor to Bills, Dr. Ambedkar moved an amendment which sought to substitute the original proviso in a new form. According to the new proviso, the Governor may, as soon as possible after the presentation of a Bill to him assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses would reconsider the Bill or any specified provisions thereof and in particular, would consider the desirability of introducing any such amendments as he may recommend in his message and thereupon the Bill shall be reconsidered by the House or Houses shall re-consider the Bill accordingly, and if the Bill is again passed by the House or Houses, with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

Dr. Ambedkar explained that the new proviso sought to restore the original powers in the original proviso. In the first place, the Governor could ask the Government only to return the Bill when the Legislature was in session and not when it was in recess of sessions. The proviso, as it stood, left the matter to the discretion of the Bill to the Governor. Secondly, in the original proviso, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, right was given to the Governor to return the Bills only in such cases where the Legislature of a Province was unicameral. In the new proviso, the Governor could do so even if the Legislature of a province was bi-cameral.

The House had not concluded consideration of the Article when it adjourned till Monday.

INDIA'S DRAFT CONSTITUTION

ASSEMBLY RESUMES DISCUSSION

QUESTION OF SECOND CHAMBERS

(FROM OUR CORRESPONDENT.)

NEW DELHI, July 30.

The Constituent Assembly commenced what is generally believed to be the last session for the second reading of the Draft Constitution. In businesslike fashion the House adopted without much discussion three Articles, one fixing the salary of the Judges, the second and third establishing separate Secretariats for each House of Parliament and for Legislatures in States.

A great part of the day was taken up in consideration of the two new Articles relating to Upper Houses in the States. One Article vested in Parliament the power to create or abolish Upper Houses in States if the Legislative Assembly of the State passed a resolution to that effect. But real controversy arose over another Article which also proceeded to leave it to the decision of Parliament to determine the composition of the Upper Houses in States which desire to have them. This provision was strongly opposed by a number of speakers including Pandit Lakshmikanta Maitra, Dr. Punjab Rao Deshmukh and Srimathi Purnima Banerjee.

Dr. Ambedkar and Mr. T. T. Krishnamachari defended the Article on the ground that the "bewildering multiplicity" of amendments which admitted of no compromise should be left to the Drafting Committee to leave the matter over for final decision by Parliament.

When the House proceeded to vote on the Article, the President, Dr. Rajendra Prasad, confessed to a sense of disappointment at the inability of the Drafting Committee to arrive at a reasonable compromise on the points under debate. The President thought that even though the Drafting Committee was faced with a number of amendments it should be possible to reconcile opposing views. He urged that instead of dropping the subject at that stage in despair, the Drafting Committee should make another attempt to reach a solution. The President's appeal was greeted with loud cheering from all sections of the House which agreed to the Drafting Committee reconsidering the subject. The House will meet again on Monday.

NATIONAL LANGUAGE

Before the Assembly resumed discussion on the Draft Constitution this morning, Seth Govind Das (C. P. and Berar) wanted to know whether the question of the national language for India would be discussed by the House or left to the Parliament.

He said that he had heard it being talked that the language question would be left to the Parliament. Seth Govind Das added that this was the last session of the Assembly and it was necessary that a date be fixed for discussion of this question.

Dr. Rajendra Prasad, President of the Constituent Assembly, replied that the question whether the national language problem should be left to the Parliament to decide would depend on the decision of the House. He thought, therefore, that no further question was necessary, When the Article relating to the national language came up for discussion, he added, "we shall see to it."

SECRETARIAT FOR LEGISLATURES

The first Article placed before the House by Dr. B. R. Ambedkar, Chairman of the Drafting Committee sought to ensure the independence of the Legislature Secretariats from executive interference. It was mainly on the lines recommended by the Speakers' conference.

Each House of Parliament, says the new Article 79 (A), shall have a separate Secretarial staff: provided that nothing in this Clause shall be construed as preventing the creation of posts common to both Houses of Parliament. The Parliament may, by law, regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of either House of Parliament. Until the necessary provision is made by the Parliament, the Parliament of the Union may, after consultation with the Speaker of the House of the People (Lower House) or the Chairman of the Council of States (Upper House), as the case may be, make rules regulating the recruitment and conditions of service of the persons appointed.

Dr. B. R. Ambedkar explained that this procedure had been adopted by the Central Legislature as far back as 1928 or 1929 after a dispute between the Executive Government and President Vithalbhai Patel, but it had not been followed by the various Provincial Legislatures.

SPEAKERS' CONFERENCE RESOLUTIONS

The Conference of Speakers, Dr. Ambedkar went on, passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution, so as to regulate the strength, conditions of service and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. The Committee thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate Secretarial staff. The rest of the matter was left to be regulated by the Parliament.

Mr. H. V. Kamath (Central Provinces) moved seven amendments, some of them to eliminate "superfluous, redundant and clumsy" words. For instance, Mr. Kamath asked, why not use the simple words "shall prevent" instead of "shall be construed as preventing." He wanted the Parliament to regulate not only the recruitment and conditions of service of the persons appointed, but also their salaries and allowances.

Supporting the provision of an independent Secretariat for the Speaker, Mr. H. K. Sidhwa suggested that care should be taken in the recruitment of the staff. As in the House of Commons, the Chief Executive Clerk should be empowered to recruit special staff, who would have an amiable nature and would be helpful to the members.

Mr. Brajeshwar Prasad pointed out that by the Article the need for a separate Secretariat was recognised, but he did not like the provisions that the appointment, promotion and other conditions of service should be left to be determined by Parliament. They should be under the regulations of the Public Service Commission. It was necessary that the Speaker should not be vested with powers of patronage and he should be above suspicion.

The House rejected the amendments and adopted the Article.

SUPREME COURT JUDGES

Dr. Ambedkar then moved a new Article in the place of Article 104 regarding the salaries and rights of Supreme Court Judges.

It provided that the Judges of the Supreme Court should be paid such salaries as were specified in the Second Schedule. Every Judge should be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension, as might from time to time be determined by or under law made by Parliament and until so determined, to such privileges, allowances and rights as were specified in the Second Schedule. Neither the privileges nor the allowances

(Continued on Page 7.)

INDIA'S DRAFT CONSTITUTION

(Continued from page 1)

of a Judge nor his rights in respect of leave of absence or pension should, however, be varied to his disadvantage after his appointment.

Dr. Ambedkar explained that the Article was almost the same as the original Article, excepting the fact that the word "privileges" had been introduced. What those privileges were would be a matter to be discussed when the Second Schedule was taken up by the House.

Pandit Hridayanath Kunzru moved an amendment stating that the pension allowable to a Judge of the Supreme Court should not be less than that which would have been admissible to him if he had been governed by the provisions of the present Constitution. He pointed out that Dr. Ambedkar's Article provided that the rights of a Judge in respect of pensions should not be varied to his disadvantage after his appointment. So far as the existing incumbents were concerned, no change would be made in their pensions. He, however, contended that provision for the future entrants should also be made.

Opposing the amendment, Dr. Ambedkar pointed out that the rights of a Judge as to his salaries, leave and pensions were to be appointed—those rights which were in accordance with the terms of appointment—would not be liable to be changed by the Parliament. The Parliament had been given power to make laws from time to time for changes in salaries and pensions, but it applied only to new Judges and would not affect old Judges. Thus the principle for which Pandit Kunzru was fighting for had already been introduced in the Article. His second objection to Pandit Kunzru's amendment was that it suggested that the Federal Court Judges should get the same salary and pensions to which each one of them would be entitled in pursuance of the present rules, if they were appointed Judges of the Supreme Court. He could not accept this proposition. The amendment sought to establish a pension for the Supreme Court Judges on the basis that the existing salaries of the Federal Court Judges would be continued. That proposition had not yet been accepted by the House.

After rejecting the amendment of Pandit Kunzru, the House approved Dr. Ambedkar's amendment substituting a new Article for Article 104.

LEGISLATIVE COUNCILS

Dr Ambedkar moved a new Article 148-A on the question of abolition or creation of Legislative Councils in States.

The Article stated that Parliament might, by law, provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passed a resolution to that effect by a majority of the total membership of the Assembly of not less than two-thirds of the members present and voting. Any such law should contain provisions for such amendment of this Constitution as might be necessary to give effect to the provisions of the law and also contain such incidental and consequential provisions as the Parliament might deem necessary. No such law should be deemed to be an amendment of this Constitution.

Dr. Ambedkar explained that the Article provided for two contingencies. (1) for the abolition of the second chamber in those provinces which had a second chamber at the time of the commencement of the Constitution, and (2), for the creation of a Legislative Council in the Provinces where at the time of the commencement of the Constitution there was no second chamber. As regards procedure the matter was left to the lower chamber, which by a resolution could recommend either of the two courses. In order to facilitate a quick change being made, either in regard to abolition or creation of a second chamber, provision was made that such law was not to be deemed as an amendment of the Constitution. It would obviate the difficult procedure that had been provided for the amendment of the Constitution.

Prof. Shibbanlal Saxena moved an amendment stating that fourteen days' notice should be given for any such resolution being moved in a State Legislature. He welcomed the provision which enabled the lower houses to abolish a second chamber.

Mr. H. V. Kamath, by an amendment, wanted the deletion of that part of the Article which provided for the creation of a second chamber in provinces where there was none. He said that the creation of a second chamber was a retrograde and reactionary step.

Mr. R. K. Sidhwa, by an amendment, suggested the deletion of the restriction of a two-third majority for the passing of a resolution by a State [illegible] question was the reality [illegible] the provision for a majority

Free press Journal 1949

SECOND CHAMBERS

The Drafting Committee of the Constituent Assembly has found itself unable to make acceptable recommendations about Second Chambers.

The matter has been referred back so that the Committee might make another attempt.

The trend of opinion in the Constituent Assembly is against Second Chambers having any substantial powers.

Even if the Drafting Committee discovers some acceptable formula for their formation they will be shadowy organisations whose main business will be to chew the cud of the decisions taken by the lower houses.

Then why have them at all?

The larger Provinces were given Second Chambers under the 1935 Reforms.

But our experience of them has not been inspiring.

No doubt they held long discussions.

But they were never able to give the impress of their personality to any important measure.

The same was true of the Council of State at the Centre.

There is no reason to think that conditions will be different in the future.

Our constitution-makers are, evidently, impressed by the fact that Britain and America have Second Chambers.

The House of Lords in Britain is a historical accident. Its functions are now largely ornamental.

The Federal Second Chamber in the United States is an effective body because it has been entrusted with the performance of definite and important functions.

If Second Chambers here have no such functions to perform they will be superfluous.

The wisest course for the Constituent Assembly would be to leave the door open for the formation of Second Chambers in the future if any need is felt for them.

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HINDUSTHAN STANDARD

AN INDEPENDENT ORGAN OF INDIAN NATIONALISM

CALCUTTA, THE 1ST AUGUST, 1949

THE UPPER HOUSE

THE utility of the Upper House has for a long time been a matter of dispute among the constitutional pundits of the world. Those who will make a short shrift of it argue that either the Upper House agrees with the Lower House in which case it is superfluous, or it disagrees with the Lower House in which case it is a nuisance. But there are people who hold that the function of an Upper House can be something other than mere agreeing or disagreeing with the Lower House. There is no doubt truth in this view. But the fact is that there has been a steady decline in the importance of the Upper House all over the world. The Upper House is coming to be regarded by more and more people as incompatible with democracy.

So far as our new Constitution is concerned it has been already decided that there will be Upper Houses in six Provinces and the relevant Article in this connection has also been adopted. Many, we understood, were opposed to the idea of a Second Chamber in the Provinces but the contrary view prevailed, at least in the case of six provinces. There was found, however, a wide divergence of views regarding the composition of the Upper House and Article 150 which deals with the matter was therefore held over from the previous sessions of the Constituent Assembly. Such a large number of amendments, some of them contradictory to one another, were put forward by the members on this Article that the Drafting Committee knew not what to do with them. It could neither incorporate them in one comprehensive amendment, nor could it produce one on its own behalf which could be satisfactory to most of the view points represented to the Committee. Failing to find a way out, the Committee decided to leave the matter to Parliament.

When, therefore, the Constituent Assembly reassembled on Saturday, Dr. Ambedkar moved a new Article which left it to Parliament to decide the composition of the Legislative Councils, the qualifications of the members of these bodies and other relevant things. It, however, laid down that the total number of members in the Legislative Council of a State shall not exceed 25 per cent of the strength of the Lower House and shall in no case be less than 40. This provision was called an "arithmetical absurdity" by one member and it was pointed out by him that if the strength of the Lower House was 100, then the number of members in the Upper House was to be not more than 25 and not less than 40. This particular member was somewhat rash in his opinion, for it is difficult to conceive of a province which, even under adult franchise, would have a Lower House consisting of less than 160 members. The main criticism was, however, to the effect that such an important matter as the composition of the Upper House should not be left to Parliament but should be decided by the Constituent Assembly itself. Speaker after speaker stressed the point. At last the President himself intervened. He said, "I confess my sense of disappointment that such important matters as the composition of Legislature should not be laid down definitely by the House itself." He added: "The Drafting Committee could still make another attempt to solve this question and bring the proposal before the House." Accordingly the Article has been held over. The Drafting Committee will reconsider the matter again and place a fresh amendment before the House later in this session.

The Drafting Committee is going to have no easy task in the matter in view of the fact that not a few contradictory suggestions have been made by members as regards the composition of the Second Chamber. But the Drafting Committee ought to be able to make definite proposals on the issue. We agree with the President that there was no sense in the proposal to leave such a fundamental question to Parliament. That would be shirking duty and responsibility.

In the modern world, Second Chambers have been, as we have said, steadily declining in power and importance. In many countries such as Greece, Yugoslavia and Rumania they do not exist at all. Most of the Canadian provinces have no Second Chamber. They are also non-existent in the Swiss Cantons. Even the British House of Lords has been greatly "tamed" by the Parliament Act of 1911. Nevertheless, it must be admitted that the Second Chambers have not become entirely useless in the constitutional structure of a State. The four-fold function attributed to them—namely, the preventing of hasty legislation, securing the representation of minority points of view, providing for the inclusion of talented men and experts in the body of legislators and exerting a check on revolutionary tendencies—is still important, particularly in a new-born State. To those who are opposed to Second Chambers in principle, it may be pointed out that by Article 148A which has been adopted by the Constituent Assembly it has practically given power to the Lower House to abolish the Upper House by a two-thirds vote. Such abolition, it has been laid down, will not be regarded as an amendment of the Constitution and will not require any complicated procedure.

The Hindustan Times

MONDAY, AUGUST 1, 1949.

SECOND CHAMBERS

When on the first day of the present session, the Constituent Assembly, at the intercession of the President, refused to leave to Parliament decision on the question of composition of the Upper Chambers of the provincial legislatures, it was guided by a sound instinct. The Drafting Committee had suggested originally that the Legislative Council should have a membership not exceeding 25 per cent of the seats in the Legislative Assembly and that one-third should be elected by the Lower House in accordance with the system of proportional representation by means of the single transferable vote, one-half should be elected from panels representing the universities, art and science, agriculture, engineering and public administration and social services, and the rest nominated by the Governor. Under the revised formula now suggested, though the total membership is not to exceed 25 per cent of the Lower House, it is not to be less than 40 in any case. The panel system of election was based on the Irish model, but reports from Ireland stated that the system had not worked there quite as successfully as was hoped. To this proposal over 28 amendments were tabled by different members containing a bewildering variety of suggestions. Since the Drafting Committee could not induce the members to agree to any common proposal, it followed the least line of resistance by suggesting that the question should be left to Parliament to decide.

Dr Ambedkar argued that the procedure suggested made no serious departure from accepted principles, as Article 149 had left decision on delimitation of constituencies to Parliament and till this was done it would not be possible to constitute the Lower House. But the reasoning left the House unconvinced. The Upper Chamber is an essential part of the machinery of government and it will be a strange constitution which left decision on the composition of an organ of government to the future legislature. The least that a constitution must do is to decide the composition and the powers of the Executive, the Legislature and the Judiciary. If the Drafting Committee could not induce agreement among members who had tabled amendments, it could, at any rate, have placed before the Constituent Assembly what it considered to be the best proposal under the circumstances and asked for its decision. At the President's suggestion, the question was again remitted to the Drafting Committee and consideration of the article postponed.

On the general issue of Second Chambers, though the constitution provides for bicameral legislatures in six out of nine provinces, a new article empowers Parliament to create or abolish Legislative Councils in States. This would enable Parliament to establish Upper Chambers in some of the States and States Unions, whose position in the constitution is being made to approximate to that of the provinces. While it will be a costly luxury to provide small units with legislatures consisting of two Chambers, in some of the bigger provinces, Second Chambers may well discharge a useful function as revising bodies, in checking hasty legislation on which popular houses may embark, without calculating the consequences. But to enable the Second Chamber to discharge the function successfully, it should not be a mere replica of the popular chamber. The Upper House to be useful must consist of eminent persons, distinguished in different walks of life, who may not ordinarily get into the other chamber through the rough and tumble of elections. It must consist of elder statesmen and the intellectual classes who will not ordinarily allow themselves to be swayed by passing gusts of popular passion. No one can surmise in advance, how the newly-enfranchised millions under adult franchise will exercise their voting rights. In view of this, the existence of Second Chambers will act as a healthy check, though not frustrating the will of the electorate. As to the exact method of composition of such a house, there may be difference of opinion but not about the general nature of its membership or the function it will discharge in the constitution. The desire to work according to a predetermined time-table must not be allowed to stand in the way of the Drafting Committee devoting the necessary time for consideration of difficult problems and reaching sound decisions which will stand the test of time. Where, as in India, there is a danger of the radical, democratic forces unleashed by the attainment of freedom assuming undesirable shapes, the importance of checks and balances in the constitution cannot be over-emphasized. It is to be hoped that the Drafting Committee will finally come forward with a proposal about the composition of Legislative Councils in the provinces which will prove acceptable to the Constituent Assembly.

UPPER CHAMBERS IN PROVINCES

OVERRIDING POWERS FOR LOWER HOUSES

NEW ARTICLE ADOPTED

(FROM OUR CORRESPONDENT.)

NEW DELHI, Aug. 1.

After nearly two hours' debate, the Constituent Assembly to-day decided to limit the power of Upper Houses to delay legislation passed by the Lower Houses to three months in the first instance and one month in the second.

Dr. B. R. Ambedkar, Chairman of the Drafting Committee, said that originally it was intended to resolve differences between the two Houses by means of a joint session. Under the new Article, the decision of the more popular (Lower) House would prevail in case the two Houses had not been able to reconcile their differences of opinion by mutual agreement.

Pandit Jawaharlal Nehru, intervening in the course of the debate on the future constitutional status of the Centrally Administered areas, urged that Parliament's discretion to deal with these areas individually on their merits should not in any way be fettered by the incorporation of restrictive Articles in the Constitution. He agreed that Delhi, the Capital city, should be treated separately from the rest of the territories falling under the same category and he had no doubt that the Assembly would assemble after the adoption of the new Constitution, would deal with the subject adequately.

The debate arose when Part VII of the Draft Constitution (Articles 212 and 213) dealing with the Centrally Administered areas was taken up for consideration. A new Article was substituted by the Drafting Committee which vested power in Parliament to legislate in any way it pleased as provided in the original Article. A number of speakers including Mr. Brajeshwar Prasad, Mr. Biswanath Das and Mr. Chaudhri Ranbir Singh, opposed the idea of a separate constitution for Centrally Administered areas. Chaudhri Ranbir Singh urged that Delhi Province, excluding New Delhi, should be merged in East Punjab and criticised the idea of creating autonomous administrations for areas which were smaller than a district of any Province in India. For the first time in to-day's debate, one Indian MP spoke freely discussed of New Delhi being separated from the rest of Delhi Province.

AUTONOMY FOR DELHI PROVINCE URGED

Mr. Deshbandhu Gupta made an impassioned plea for an autonomous Delhi Province consistent with the position of Delhi as the Capital of India. He bitterly complained that the Delhi administration was dominated by East Punjab and the United Provinces in every sphere of activity and urged that the people of Delhi should have their legitimate share in shaping the Province's future. He wanted an assurance that Delhi would be given a separate constitution and hoped that the provisions of the new Article would be made realistic and practical shape instead of becoming just an eyewash. Mr. Deshbandhu Gupta also urged that Centrally Administered areas should be given adequate representation in Parliament, a demand readily conceded by the Prime Minister who said that some substantial change in this regard might be introduced later, on. To-day's debate did not reveal any significant volume of support for the idea of Delhi being constituted as an autonomous unit. The debate will be resumed to-morrow.

POWERS OF LEGISLATIVE COUNCILS

Earlier in the day, the need for Upper Houses in the Provinces was raised again when Articles restricting the powers of Provincial Councils to interfere in the legislative activity of Lower Houses were considered. A new Article, introduced by the Drafting Committee, deletes the provision for joint sittings of the two Houses made in Article 229 to conflict Bills on which conflicting decisions were recorded and, instead, provides that if after a Legislative Council rejects a Bill passed by the Lower House or the latter adopts it again with or without any amendment, it would become law.

Many speakers, including Pandit H. N Kunzru, urged that if it was decided to have Upper Houses, then they should be clothed with adequate powers to discharge the functions they were expected to fulfil. Mr. Brajeshwar Prasad, who expressed concern regarding the consequences of the introduction of adult suffrage in one leap, urged that as most of the Lower Houses were bound to be captured by "the communal forces" the existence of Upper Houses had become a matter of fundamental necessity to prevent hasty and ill-considered legislation. Mr. Brajeshwar Prasad even wanted that Governors and the President should have power to veto any legislation passed by Lower Houses. Mr. Anantasayanam Iyengar said that as there was a large volume of opinion against having Upper Houses enjoying full powers, it was left to the Provinces for final decision. Most Provinces, he thought, would agree to have Upper Houses if they were merely advisory bodies. Pandit Kunzru also urged that greater time should be allowed to Upper Houses to examine Bills sent before them and the limit of three months provided in the new Article was altogether insufficient.

Dr. Ambedkar defended the Article saying that the original Article was too restrictive in scope while the new Article gave Legislative Councils sufficient time to deal with all subjects brought before them. The debate on the Article lasted more than an hour and a half and finally the new Article, as moved by the Drafting Committee was adopted.

When the House resumed consideration of Article 173 on the question of assent to Bills by the Governor of a State, this morning (adds PTI), it was proposed that the question of the powers of the Upper Chamber in relation to any Bill passed by the Lower House might first be decided.

The President accepted the suggestion and called upon Dr. Ambedkar to move Article 172, for which he had proposed a substitute Article. The original Article in the Draft Constitution provided for a joint sitting of both Houses in a State when the Upper Chamber differed from the views of the Lower House. The new Article moved by Dr. Ambedkar dropped altogether the exigency which would call for a joint sitting of two Houses of the Legislature.

The Article stated that, if after a Bill had been passed by the Legislative Assembly of a State having a Legislative Council and had been transmitted to the Legislative Council (a) the Bill was rejected by the Council or (b) more than two months elapsed from the date on which the Bill was laid before the Council without the Bill being passed by it or (c) the Bill was passed by the Council with amendments to which the Legislative Assembly did not agree, the Legislative Assembly might again pass the Bill in the same or in any subsequent session with or without any amendments which had been suggested by the Legislative Council and then transmit the Bill to the Council again. If after a Bill had been passed for the

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UPPER CHAMBERS IN PROVINCES

(Continued from page 6

second time by the Legislative Assembly and transmitted to the Council, the Bill was rejected or more than one month elapsed from the date on which the Bill was laid before the Council without its being passed or it was passed with amendments by the Council, the Bill should be deemed to have been passed by the Houses of Legislature.

BRITISH EXAMPLE

Moving the new Article substituting Article 172, Dr. Ambedkar pointed out that, when the House discussed the question of the resolution of differences between the Council of States and the House of the People, it came to the conclusion that, having regard to the federal character of the Central Legislature, it was proper that those differences between the two Houses should be resolved by a joint session. It was suggested by some members then that instead of adopting the procedure of a joint session, the House should adopt the procedure followed by the Houses of Parliament in the United Kingdom under which the decisions of the House of Commons with regard to particular Bills other than a Money Bill would prevail in the final analysis if and when the House of Lords had failed to agree or refused to agree to a proposal that the Commons after a certain period had elapsed.

After consideration of the method, said Dr. Ambedkar, it was felt that the procedure laid down in the Parliament Act for the resolution of differences between two Houses was more appropriate in the case of States. Consequently, the Drafting Committee had made a departure from the original Article and the new Article embodied the proposal that the decision of the more popular House, representing the will of the people, ought to prevail if two Houses did not been able to reconcile their differences of opinions by mutual agreement.

MR. T. T. KRISHNAMACHARI'S AMENDMENT

Mr. T. T. Krishnamachari proposed an amendment, suggesting a period of three months, instead of two months, for the consideration of a Bill by the Council in the first stage when it was sent up by the Lower House. He felt that two months were inadequate and three months would be more reasonable. He explained that the time taken for a Bill to be returned to the Lower House would be three months from the date it was laid before the Upper House. It was merely an extension of the period and did not materially alter the scope of the new Article.

Mr. Brajeshwar Prasad opposed the Article. He saw no reason for the deletion of the provision of a joint sitting. The House should be clear in its mind, said Mr. Prasad, whether it wanted an Upper Chamber in the provinces. If there was a need for a Second Chamber, then it must be vested with adequate powers. Time for consideration of the new Constitution on the basis of adult franchise, he said, it would be risky to vest such powers in the hands of Lower Houses. He did not believe in the sovereignty of the Lower House and he wished that power must be vested in the hands of those who were literate and wise with a sense of justice. He said he believed that the Lower House, constituted on the basis of adult franchise, would be able to do full justice to the vast majority of the people who were illiterate, steeped in poverty, fanaticism and superstition. Having regard to the political life of the country, he would favour the idea of vesting the Upper Chamber with real responsibility. As a compromise, he would, however, suggest the method of joint session and said that the Upper Chamber must be vested with the power of delaying legislation. The period of consideration by the Upper Chamber should therefore be extended to at least one year. Otherwise, the present system of parliamentary democracy in India would be in disaster".

Mr. Shibbanlal Saxena supported Dr. Ambedkar's amendment. He regretted that there should be a provision for the calling of a meeting of the Council within two months after a Bill had been laid before it.

Mr. Talmul Hussain said that, if the Upper Chamber was vested with more power, it would mean power of veto being given to a few reactionaries against democracy, the will of the people must prevail.

Mr. Hafizuddin Ahmed, opposing the Article, argued that it would frustrate the object of a Second Chamber, namely, revision and delay. The utility of a Second Chamber was appreciated by many provinces, but if a Second Chamber was to function it should be given adequate powers.

Sardar Hukum Singh felt that the procedure laid down by the Article would unnecessarily prolong consideration of legislative measures. A Bill had to be considered three times by the Lower House and this involved a lot of unnecessary delay. It would delay legislation that might be required to be passed with some speed.

"ABOLISH SECOND CHAMBERS"

Dr. P. R. Deshmukh urged the abolition of the Second Chamber in provinces. He said that, if the object of the Second Chamber was merely to delay legislation, there was no need for the unnecessary waste and the expenditure of money and energy on this regard was not at all commensurate with the importance of legislation that had been allotted to it.

Mr. Ananthasayanam Iyengar pointed out that a large volume of opinion in the country was against Second Chambers in the provinces. If the Second Chambers were to function as an advisory body, he said, there was every chance of most of the provinces electing to have Second Chambers. By the provision of joint sitting and by clothing the Second Chamber with enormous powers, the House would enable a few persons in the Upper House to override in certain cases the considered opinion of the Lower Houses almost impossible it was, therefore, necessary to avoid conflict for power and the Lower House must have full freedom of legislation.

Pandit Kunzru said that the Legislative Council might be constituted in a way that it might be "the creature of Government and the Lower House." The Upper Chamber would be seldom in a position to exercise independent judgment on any matter. As a rule, it would reflect the opinions of the majority of the Lower House. He therefore, felt that there was no use in having an Upper Chamber. If it was decided that there should be an Upper Chamber, he would suggest that its powers should not be curtailed to such extent as to render it unable even to consider carefully the measures that might be sent up to it by the Lower House. The period for consideration by the Upper Chamber of any measure sent by the Lower House should not be reduced to such an extent as to make the Upper Chamber look ridiculous.

Mr. V. I. Muniswamy Pillai, said that unless the Upper Houses had an effective say in the passage of Bills, the interests of many communities might suffer.

Mr. N. G. Ranga said that he was not in favour of Second Chambers at all. But, as the House had decided in favour of having Second Chambers in certain provinces, their only purpose should be to act as a moderating or delaying factor and not nothing more. They should not be empowered to such an extent as to enable them not only to delay, but to frustrate the legislative efforts and achievements of the Lower Houses, because it was the Lower Houses which were really responsible to the people as a whole. Even the power proposed to be given to Upper Houses to delay legislation by three months might sometimes prove very dangerous. "It may be necessary," said Mr. Ranga, "to pass legislation expeditiously in order to stave off dangerous social upheavals Second Chambers all over the world have been centres of reaction and I am opposed to proposals which would make Second Chambers in this country the citadels of reaction and orthodoxy."

"I do not want Second Chambers at all, but if I am to compromise with this evil, I am not prepared to give them power to delay legislation for more than three months"

Mr. Syamanandan Sahay (Bihar) said that, if adequate powers were not given to Second Chambers to serve a useful purpose. It was better not to bring them into existence and cause a drain on public revenues. He was confident that the Upper Chambers which would be created under the new Constitution would not be reactionary. Experience in Bihar even under the present Constitution showed that almost all the amendments suggested by the Legislative Council were ultimately accepted by the Legislative Assembly in Bihar. That showed that the Upper Chambers had their usefulness.

Favouring joint sittings of both Houses in case of differences of opinion Mr. Sahay said that at joint sittings members of the Lower Houses would be in a majority and hence their views were bound to prevail. But such sittings would give them an opportunity to hear the views of experienced people belonging to the Upper Houses. Adult administration in democracy was administration by persuasion and reasoning.

Mrs. Renuka Ray said that the purpose of revising hasty legislation for which the Upper Houses were intended, could as well be served by the President who would have the power to send back such legislation to the Assembly. In many of the smaller provinces, Upper Chambers would in fact be a very expensive luxury. Anyway, the majority had decided in favour of Upper Houses as revising chambers, but now some members sought to make them dilatory chambers. It would be an extremely retrograde measure to turn them into dilatory chambers.

At this stage, the House accepted a closure motion and ended the ninety-minute debate.

DR. AMBEDKAR'S REPLY TO DEBATE

Dr. B. R. Ambedkar, replying to the debate, said that the Article was modelled on Article 57 in the Australian Constitution. In discussing the matter, three different questions arose. First, how many journeys would a Bill have to undertake before the will of the Lower House prevailed finally. Secondly, what should be the period allotted to the Upper Chamber for each journey, both for going and coming back? It was proposed that the Bill should have two journeys. It might be possible to argue that more journeys than two ought to be allowed, but that was a question of practical politics. In the case of the first journey, the period would be three months—he was accepting Mr. Krishnamachari's amendment to that effect—and in the second it would be one month.

Pandit Kunzru had said that the Drafting Committee had no fixed mind, that it was changing from moment to moment, that it was fickle. He had referred to the original draft where undoubtedly a period of six months had been laid down. Before agreeing to that, he said, he would point out to him that the period to be allowed was not a matter of principle at all. It was a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact, it felt that even three months was too long a period for the Lower House and in order to provide for such exceptional cases as was thought that a period of three months was reasonable.

After all, asked Dr. Ambedkar, what was the Upper Chamber going to do? It would be dealing with a Bill which had been sent to it by the Lower House. It was not going to re-draft the whole thing, it was not going to alter even the policy of the Bill with certain clauses of public importance that it would like to deal with for a period of three months was ample for that sort, three months in the first instance was a large enough period, and the second three months was only a modest activity of a Second Chamber. For the second journey, it was felt that one month was quite enough.

AN IMPROVEMENT ON ORIGINAL PROPOSAL

The third question that arose was, what was to be the starting point for calculating the three months and one month? Pandit Kunzru will forgive me for saying that the Lower Chamber had failed to state the importance of the changes which the Drafting Committee has made". Dr. Ambedkar said, in the provisions contained in Article 172 as it stands, I have not the slightest doubt, and the Drafting Committee has not the slightest doubt, that the powers of the Upper Chamber have been completely negatived and nullified."

Explaining this point, Dr. Ambedkar said that, first of all, it was made impossible under the original provision to say that a Bill could be passed by the Upper Chamber within the stated period from the passing of the Bill by the Lower House finally. It would have been possible to say that the Second Chamber should pass the Bill in the stated period from the date of reception of the Bill in the Upper Chamber.

"Suppose a Bill was accepted either of the two possibilities," Dr. Ambedkar said "the consequences would have been very disastrous. The Lower Chamber, by summoning of the Upper Chamber is entirely in the hands of the Executive and it would be the perfectly possible for a dishonest Executive to take advantage of this and also the Executive could have delayed the Upper Chamber by not putting the Bill on the agenda and thereby not giving the Upper Chamber a chance to consider it.

"We thought that this sort of procedure was wrong. Therefore, in order to protect the Upper Chamber, the Drafting Committee reflected on the possibilities of determining the starting point, namely, the passing of the Bill and the receipt of the Bill, and finally arrived at the point the provisions contained in the new Article as has been proposed now, namely, that the starting point should be when the Bill has been tabled for consideration. If after the Bill has been tabled for consideration the Upper Chamber does not finish its proceedings with regard to the Bill within the particular time fixed by this clause, then, obviously, the right of the Upper Chamber to delay the Bill comes to an end its own default and nobody can complain, and certainly the Upper Chamber cannot complain that the Executive has thereby cut down the rights of the Upper Chamber. The new proposals give the Upper Chamber rights which the Executive cannot take away."

Pandit Kunzru, intervening, asked, "Does this clinch explanation satisfy the Hon'ble Member himself"?

Dr. Ambedkar said, "I he likes to call my explanation clinch, he may do so, but I am not prepared to say that there is any great improvement on the original clause. If it does not satisfy him, I am very sorry, but he did not point any point to which I think I have not given an explanation". The new Article, as amended by Mr. Krishnamachari, was accepted.

GOVERNOR'S POWERS TO RETURN BILL

The House adopted the new Article 175, discussion on which had been held over. The Article empowers the Governor to return Bills other than a Money Bill for reconsideration by the Legislature.

During the debate, Mr. Brajeshwar Prasad made an unsuccessful effort to persuade the House to vest in the Governor and the President the power to veto any legislation passed by the Legislature. Such power was necessary to check "disruptive" legislative tendencies. "One who has closely scrutinised the provisions of the legislation which has been passed by the provincial legislatures," he said, "is filled with misgivings. His fear is real."

Mr. Shibbanlal Saxena felt that to vest such powers in the Governor, as contemplated in the Article, was a "reactionary" move.

Mr. T. T. Krishnamachari, replying on behalf of the Drafting Committee, pointed out that the Governor could not act on his own, but had to act on the advice of his Ministers. The power envisaged was only a saving clause to evise any hasty action. It did not abridge the power and responsibility of the Ministry or the power of the Lower House in any way.

The House passed without discussion Article 186, dealing with the President's power to direct the Governor to return a Bill other than a Money Bill to the legislature for reconsideration.

Article 187 says that when a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent, provided that where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the legislature of the State together with a message. The legislature shall then reconsider the Bill within a period of six months from the date of receipt of the message. If the Bill is again passed by the legislature with or without amendment, it shall be presented again to the President for his consideration.

The House adopted Article 83 (A) relating to disqualification of Members of Parliament.

Dr. Ambedkar explained that this was a replica of an Article already adopted to deal with similar cases in the provinces. The Article provides that the President's decision shall be final, but before he gives any decision, he shall obtain and act according to the opinion of the Election Commission.

The House adopted Article 127 (A) which provides that audit reports relating to accounts of a State shall be laid before the legislature. Articles 210 and 211 of the draft constitution relating to Auditors-in-Chief for the States, their functions and the reports to be submitted by them to the Auditor-General were deleted.

Article 197 (salaries of Judges), on the lines of the Article already adopted, relating to Supreme Court Judges, was passed.

The House next took up Part VII of the constitution regarding the States mentioned in Part II of the First Schedule, namely, the Centrally Administered areas. The first Article in this chapter (Article 213) provides that the territories specified in the Schedule should be administered by the President acting to such extent as he thought fit through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Governor of a neighbouring State. The President should consult the Government concerned and ascertain in such manner as the President considered most appropriate the wishes of the people of the Union Territories concerned.

Dr. Ambedkar moved an amendment for the deletion of reference in the original Article to Indian States. He said that provisions with regard to these States were being made in a separate Schedule.

Prof. Shibbanlal Saxena referred to conditions in Ajmer-Merwara, Delhi and Coorg. He was very decided about the future set-up, he said, it was not proper to leave it to Parliament to frame the constitution.

Mr. Brajeshwar Prasad felt that in the interest of efficiency of administration, there should be no change in the administration of the Centrally Administered areas. He said that it was ridiculous to talk of Provincial autonomy for these tiny areas.

Dr. P. R. Deshmukh pleaded for reconsideration of the Article. The question of administering these areas in some other provinces should also be gone into so that the people of the Centrally Administered areas would share the same responsibility and have the same democratic setup as the adjoining areas. This could be possible in view of the fact that huge areas had been integrated or merged with other States or Provinces. It was not in keeping with the spirit of the time, to perpetuate the existence of small islands of territory. Further the people in those areas must have some democratic system of administration.

Mr. Biswanath Das, former Premier of Orissa, said that the Article would perpetuate the form of administration which had been inherited on all hands by public servants. On the ground of economy and efficiency of administration, these units should be merged in the neighbouring Provinces. So far as Delhi was concerned, it could be treated on the lines of London with a Council for the city or on the lines of Washington or Canberra.

Mr. K. Santhanam complained that the people of Delhi were not given even local self-government and for the very four municipal committees within Greater Delhi. Even people in backward areas were given the right of "privy" autonomy, but Delhi citizens were denied the privilege of having popular administration.

The House adopted the Article after closure was moved to the debate by Srimati Durgabai.

Dr. Ambedkar then moved an amendment replacing Article 21 by a new Article relating to the creation or continuance of local legislatures or Council of Advisers or Ministers. The Article provides Parliament may by law create or continue for any Centrally Administered area a body whether nominated, elected or partly-nominated and partly-elected, to function as a legislature for the area or as Advisers or Ministers or both, charged with such constitution, powers, and functions in each case as might be specified in that law.

Dr. Ambedkar explained that a change sought to be effected by the amendment was that in the original draft the power of creating a body for legislative purposes or as Council of Advisers or Ministers was left to the President and the new Article gave the power to Parliament.

REPRESENTATION FOR DELHI

Mr. Deshbandu Gupta moved an amendment which in effect provided for adequate and special representation for Delhi in the Houses of Parliament at the Centre. He had another amendment relating to the constitution for Delhi Province, but he did not move it.

In a long-winding speech, Mr. Gupta pleaded for the cause of Delhi Province referred to the difficulties that have been experienced by the people of the province, and the aspirations of the people that had remained unsatisfied and complained about the indifference of the authorities and the Drafting Committee to the demands of the people.

He said that he was not happy about the amendment that had been moved by Dr. Ambedkar. The whole question of Delhi had been very much disappointed. The decisions that were taken and promises given earlier were given a go-bye. There was a feeling amongst the people of Delhi that Delhi and other Centrally Administered areas were receiving step-motherly treatment. So far, the people of the province had been denied autonomy. Delhi stood on a different footing from other Centrally administered areas inasmuch as its population was about 20 lakhs. The Central Legislature had been acting as Parliament for these areas. It was only fair that Delhi should get additional representation.

Mr. Gupta complained that Delhi and other centrally administered areas had not received so far a fair deal from the House and from those who are in authority.

The attitude of the Drafting Committee and the authorities towards Delhi had been unfair. A strong demand was made to liberalise the provisions and the measure of autonomy granted to these areas. Adequate safeguards were placed in the Constitution. Article 21 originally contemplated specifically local legislatures, but the amendment now moved by Dr. Ambedkar stated that it might be a body which would act as a legislature.

Replying to the argument that the amendment was drafted to cover other areas too, Mr. Gupta said that it was really unfair to treat Delhi and Pandi Pujjoda on the same plane. The right course for the Drafting Committee was to treat Delhi as a separate unit, in view of the fact that other areas were likely to be amalgamated with the neighbouring provinces.

The position of Delhi, he said, was not going to alter hereafter. Its population strength was bound to go up. Delhi would not be amalgamated with either of the neighbouring Provinces.

Opposing the idea of treating Delhi in the same way as the United States has dealt with the question of the Capital city of Washington, Mr. Deshabandu Gupta said it was unfair to compare Delhi with Washington or Canberra. Delhi had a history of its own and a civilisation. Delhi was a commercial as well as industrial town. It had not been built, but was chosen as the Capital whereas Washington was built as the Capital of the U.S.A. Therefore, they should not ignore the aspirations and requirements of Delhi and, on that basis alone, it deserved a different treatment. New Delhi and Old Delhi were integral parts of the city. Asserting that the difficulties and grievances of the people of Delhi Province were real and genuine, Mr. Gupta gave a number of illustrations. He said that even in the local municipal bodies, the people had no voice in the matters of appointments to the Municipal service. Delhi was attached to East Punjab and the people of Delhi had no voice in the choice of officials. In the High Court in East Punjab, as much as 65 per cent of the civil cases of value went to Delhi and yet Delhi's demand for a circuit court had been completely ignored. The way in which the East Punjab Government had treated them would not encourage the people to entertain any suggestion of amalgamation of Delhi with that Province.

Delhi was second to none in the whole country in regard to contributions to the fight for freedom. It was an unfounded fear that by giving autonomy to Delhi Province, difficulties might arise in the case of the Central Government. If the Central Government could not look after a tiny province like Delhi and could not carry the confidence of the people of the Capital, it should then lose the title over the country. He recalled the assurance given by Pandit Nehru that the people of Delhi would get a measure of autonomy. Over 500,000 refugees who had come to the city and who had been received with open arms had enjoyed autonomy in their original areas and it was unfair to deny them of the right they had been enjoying. The people of the province were totally opposed to the idea of the inclusion of Delhi Province in East Punjab.

Replying to the arguments that an amendment to the Constitution was necessary to give a constitution to Delhi Province, Mr. Gupta said that it should not be beyond the capacity of the constituent assembly to evolve a way out. He urged that whatever constitution was given to Delhi Province, it should be introduced simultaneously with the introduction of the new constitution in other parts of the country. He protested that Parliament or the Constituent Assembly should forget in necessary measures in the next session.

NEHRU INTERVENES

The Prime Minister, Pandit Nehru, initiating Government's attitude, said: "Obviously, the question of Delhi is an important one. As I said on the floor of the House two years ago, this House appointed a Committee for the purpose and, normally speaking, the recommendations of a Committee appointed by this House would naturally carry great weight and, if possible, be given effect to. But ever since that Committee was appointed, the world has changed. India has changed and Delhi has changed. Therefore, to take up the recommendations of that Committee regardless of these mighty changes that have taken place would be to consider this question completely divorced from reality.

"All of us sympathise very greatly with the citizens and representatives of Delhi who feel that this great and ancient city should not be left out of the picture when the new constitution comes into force. Therefore, we have to give thought to it. Now the first thing that comes up for consideration is that the situation in Delhi is not a static situation, it is a changing situation. It is far better to deal with it in a way which is capable of future change by an Act of Parliament rather than by fixed provisions in the constitution."

Again, Pandit Nehru pointed out, these provisions did not deal only with Delhi but with other Centrally Administered areas and the like. It might be that more areas might come into the picture. Therefore, anything that was put in the constitution must be something which applied to all, but that was very difficult to-day because those areas differed from one another completely. It was exceedingly difficult to find a common formula for Ajmer-Merwara, Panth-Piploda and Delhi. For all these reasons, it seemed inadvisable to put into the constitution any precise form of approach to this question except to indicate that something should be done and leave it to Parliament to do it.

Dr. Ambedkar's draft seemed to him to cover the entire group fairly. Pandit Nehru accepted the principle that at some later stage, some kind of representation for these areas in the Central Legislature should be provided for somewhere or other in the constitution. It was Government's intention to bring forward some kind of a Bill to deal with Delhi in the course of this year. He understood that Government could not do so unless the constitution itself was passed or the Constituent Assembly enabled them to do so.

The debate had not concluded when the House adjourned till to-morrow.—PTI.

Indian Express 2.8.49

Second Chambers

THE Constituent Assembly in Delhi has examined an additional article of the new constitution empowering provincial assemblies to abolish or to set up second chambers. Instead of the usual process of constitutional amendment, the procedure prescribed now is far simpler. The elected assembly can by resolution remove or restore second chambers while Parliament can define the size of any such council. A number of amendments to the draft article were immediately presented and a general discussion relating to electoral colleges, functional representation and minority rights followed. The discussion revealed that many wish to do away with second chambers in the Provinces. But arguments to the opposite effect were addressed by Radicals who wished that a council, partly elected and partly nominated, should be provided as a revising chamber. Experience under the 1935 constitution is not conclusive as to the uselessness of second chambers. Prof. Ranga admitted that while provinces should be quite free to decide about the need for a second chamber after the expression of opinion as to the necessity for councils in six provinces including Madras, it was Parliament that should decide both the composition and method of election in this case.

The plea that the present constituent assembly should fix the numbers and the qualifications of the legislative council was advanced during the debate but Dr. Ambedkar made mention of developments during the past two years, the new rule governing relations between the two Houses and the real need to make the revising chamber an expert body. He had little difficulty in showing that a house with 25 to 40 members if created by resolution would function satisfactorily. Fresh alarm over excessive representation for propertied interests seems out of place. Further, there is the consideration that adult suffrage makes it rather expedient to put a brake on the lower elected house and the results of the first election might demonstrate the need for getting a small revising chamber. The Irish constitution of 1937 to which many turn has not got rid of the Senate and there is not much conflict between the Dail and Senate.

The plea of Prof. Saksena that intellectuals should be adequately represented in the Second Chamber by giving seats to the liberal professions seems attractive but we are today not concerned with what the Seal Committee prescribed in the past for Mysore. Restraints on the upper house will be devised from the main pattern decided upon for the Centre but there is little doubt that the Constituent Assembly has an open mind at present. There is a chance of second thoughts arising in respect of the second chamber and where many mergers of states have taken place the displaced princes might provide a contingent of experienced administrators. The Constituent Assembly which discussed judges' salaries expeditiously and offered to give legislatures their own secretariats did not bother to examine parallels from Britain or the U.S.A. but confined itself to experience and prospects in India. Those who objected to a second chamber as retrograde were told that the peoples' representatives in the provinces could decide. At least one member, Mr. Brajeswar Prasad asked for nomination to a second chamber but that would clearly run counter to democratic concepts. It is better to leave the problem to the future, when conditions are settled and prejudice has been erased.

LIMITED POWER TO DELAY LEGISLATION

CONSTITUENT ASSEMBLY'S DECISION

After two hours' debate, the Constituent Assembly on Monday decided to limit the power of Upper Houses to delay legislation passed by Lower Houses to three months in the first instance and one month in the second.

Delhi's status under the new constitution was raised by Mr Deshbandhu Gupta, who complained that Delhi and other Centrally administered areas had not received a "fair deal" either from the Constituent Assembly or from the Government.

The Prime Minister, replying, said that he accepted the principle that somewhere in the constitution at a later stage some kind of representation should be provided in Parliament for the Centrally administered areas. It was Government's intention, he added, to bring forward a Bill in Parliament later this year to deal with Delhi.

When the Assembly met to resume consideration of Article 175 on assent to Bills by the Governor of a State, it was proposed that the House should first arrive at a decision on the powers of the upper chamber in relation to a Bill passed by the lower house. The President accepted the suggestion and called upon Dr Ambedkar to move Article 172 for which he has proposed a substitute article.

The original article provided for a joint sitting of both Houses when the Upper Chamber differed with the Lower House.

The new article dropped the exigency of a joint sitting of the two Houses. The article stated that, if after a Bill had been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council (a) the Bill was rejected by the Council or (b) more than two months elapsed from the date on which the Bill was laid before the Council without the Bill being passed by it or (c) the Bill was passed by the Council with amendments to which the Assembly did not agree, the Assembly might again pass the Bill in the same or in any subsequent session with or without any amendments suggested by the Council and then transmit the Bill to the Council again. If after a Bill had been passed for the second time by the Assembly and transmitted to the Council the Bill was rejected or more than one month elapsed from the date on which the Bill was laid before the Council without it being passed, or it was passed with amendments by the Council, the Bill should be deemed to have been passed by the Houses of Legislature.

DIFFERENCES OF OPINION

Moving the new article substituting Article 172, Dr Ambedkar pointed out that when the House discussed the question of the "resolution of differences between the Council of State and the House of the People, it came to the conclusion that, having regard to the federal character of the Central Legislature, it was proper that those differences between the two Houses should be resolved by a joint session. It was suggested by some members then that, instead of adopting the procedure of a joint session, the House should adopt the procedure followed by the Houses of Parliament in Britain under which the decisions of the House of Commons with regard to a particular Bill other than a money Bill would prevail in the final analysis if and when the House of Lords failed to agree or refused to agree to the proposals of the Commons after a certain period had elapsed.

After consideration of the method, said Dr Ambedkar, it was felt that the procedure laid down in the Parliament Act for the resolution of differences between two Houses was more appropriate in the case of States. Consequently, the Drafting Committee had made a departure from the original article and the new article embodied the proposal that the decision of the more popular House representing the will of the people ought to prevail if the two Houses had not been able to reconcile differences of opinion by mutual agreement.

PROPOSAL FOR AMENDMENT

Mr T. T. Krishnamachari proposed an amendment suggesting a period of three months instead of two months for consideration of a Bill by the Council at the first stage when it was sent up by the Lower House. He felt that two months were inadequate and three months would be more reasonable. He explained that the time taken for a Bill to be returned to the Lower House would be three months from the date it was laid before the Upper House. It was merely an extension of the period and did not materially alter the scope of the new article.

Mr Brijeshwar Prasad opposed the article. He saw no reason for the deletion of the provision of a joint sitting. The House should be clear in its mind, he said, whether it wanted an Upper Chamber in the provinces. If there was need for a Second Chamber then it must be vested with certain powers.

As a compromise he would, however, suggest the method of joint session and said that the Upper Chamber must be vested with the power of delaying legislation. The period of consideration by the Upper Chamber should therefore be extended to at least a year. Otherwise, the present system of parliamentary democracy in India "will lead to disaster".

AMENDMENT SUPPORTED

Prof Shibbanlal Saxena supported Dr Ambedkar's amendment. He suggested that there should be a provision for calling a meeting of the Council within two months after a Bill had been laid before it.

Mr Talamul Hussain criticized Mr Prasad's observation regarding parliamentary democracy and greater power to the upper chamber and said that if the upper chamber were vested with more power, it would mean power of veto being given to a few nominated members. In democracy, the will of the people must prevail.

Mr Nazirudin Ahmed, opposing the article, argued that it would frustrate the object of a second chamber, namely, revision and delay. The utility of a second chamber was appreciated by many provinces, but if a second chamber was to function it should be given adequate powers.

Sardar Hukum Singh felt that the procedure laid down by the article would unnecessarily prolong consideration of legislative measures. A Bill had to be considered three times by the lower house and twice by the Legislative Council. It would delay legislation that might be required to be passed with some speed.

Dr P. R. Deshmukh urged the abolition of a second chamber. He said that if the object of the second chamber was merely to delay legislation, there was no need for this paraphernalia, and the expenditure of money and energy on this was not at all commensurate with the importance or functions that had been allotted to it.

CONFLICT FOR POWER MUST BE AVOIDED

Mr Ananthasayanam Ayyangar pointed out that a large body of opinion in the country was against second chambers in the provinces. It was, therefore, left to the provincial assemblies to decide the question. If the second chamber was to function as an advisory body, there was every chance of most of the provinces electing to have second chambers.

Pandit Kunzru said that the Legislative Council might be constituted in a way that it would be "the creature of the Government and the Lower House." The Upper Chamber would be seldom in a position to exercise independent judgment on any matter. As a rule it would reflect the opinions of the majority of the Lower House. He therefore felt that there was no use in having an Upper Chamber. If the Constituent Assembly there were to be an upper chamber, he would suggest that its powers should not be curtailed to such an extent as to make it unable even to consider carefully the measures that might be sent up to it by the lower house.

Mr V. I. Muniswamy Pillai, Scheduled Caste representative from Madras said that unless upper houses had an effective say in the passage of Bills, the interests of many communities might greatly suffer.

PROF RANGA'S OPPOSITION

Prof N. G. Ranga (Madras) said that he was not in favour of second chambers at all. But as the House had decided in favour of having second chambers in certain provinces, their only purpose should be to act as a moderating or delaying factor. Mr Laxminarayan Sahay (Bihar) said that if adequate powers were not given to second chambers, it was better not to bring them into existence and cause a drain on public resources.

Mrs Renuka Ray (West Bengal) said that the purpose of revising hasty legislation, for which the upper houses were intended, could as well be served by the President who would have the power to send back such legislation to the Assembly. In many smaller provinces upper chambers would be an expensive luxury.

Mr Jaspat Roy Kapur decided in favour of upper houses as revising chambers, now some members sought to make them dilatory chambers. It would be an extremely retrograde measure to turn them into dilatory chambers.

At this stage the House accepted a closure motion and ended the 90-minute debate.

LAW MINISTER'S REPLY

Replying to the debate, Dr Ambedkar said that the article was modelled on Article 57 in the Australian constitution. In discussing the matter, three different questions arose. Firstly, how many journeys would a Bill have to undertake before the will of the lower house became paramount. Secondly, what should be the period allotted to the upper chamber for each journey, both going and coming back. It was suggested that the Bill should have two journeys. It might be possible to argue that more journeys than two ought to be allowed but that was a question of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact it felt that even three months was too long a period but it was quite conceivable that a Bill like the Zamindari Bill, which had a large number of clauses, might emerge from the lower house and to provide for such exceptional cases it was thought that a period of three months was reasonable.

After all, asked Dr Ambedkar, what was the upper chamber going to be? It would be dealing with a Bill which had been sent by the lower chamber. It was not going to recraft the whole thing. It was not going to alter every clause. It was only certain clauses of public importance that it would deal with and for a limited legislative activity of that sort three months in the first instance was a long enough period and would certainly not curtail the legitimate activity of a second chamber. For the second journey, it was felt that one month was quite enough.

The third question that arose was what was to be the starting point for calculating the three months or one month. Pandit Kunzru will forgive me for saying that he altogether failed to appreciate the importance of the changes which the Drafting Committee has made. Under the provisions as contained in Article 172 as it stands, I have not the slightest doubt, and the Drafting Committee has not the slightest doubt, that the powers of the upper chamber would have been completely negatived and nullified".

Explaining this point, Dr Ambedkar said that first of all it would have been possible under the original provision to say that the Bill must be passed by the upper chamber within the stated period from the passing of the Bill by the lower house. Secondly, it would have been possible to say that the upper chamber should so pass the Bill in the stated period from the time of the reception of the Bill in the upper chamber. "Supposing we had accepted either of the two possibilities", Dr Ambedkar said, "the consequences would have been very disastrous to the upper chamber. The summoning of the upper chamber is entirely in the hands of the executive and it would have been perfectly possible for a dishonest executive to take advantage of this clause by not summoning the upper chamber at all. Supposing we had taken the reception of the Bill as the starting point, then also the executive could have chained the upper chamber by not putting the Bill on the agenda and thereby not giving the upper chamber an opportunity to consider it.

UPPER HOUSES

deliberately adopted the provisions contained in the new article as has been proposed now, namely, that the starting point should be when the Bill has been tabled for consideration. If after the Bill has been tabled for consideration the upper chamber does not finish its proceedings with regard to that Bill within the particular time fixed by this clause, then obviously the right of the upper chamber to deal with the matter goes by its own default and nobody can complain, and certainly the upper chamber cannot complain. Therefore, rather than whittling down the rights of the upper chamber, the new proposals give the upper chamber rights which the executive cannot take away."

AMENDED ARTICLE PASSED

Pandit Kunzru, intervening, asked: "Does this childish explanation satisfy the hon'ble member himself?"

Dr Ambedkar: "If he likes to call my explanation childish, he may do so, but I have no doubt that the new clause is a great improvement on the original clause. If it does not satisfy him I am very sorry, but he did not raise any point to which I think I have not given an explanation".

The new article, as amended by Mr Krishnamachari, was accepted.

The House adopted the new Article 175. This article enables the Governor to return other than a money Bill for reconsideration by the legislature.

During the discussion, Mr Brajeshwar Prasad made an effort to persuade the House to vest in the Governor and the President the power to veto any legislation passed by the legislature.

Prof Shibbanlal Saxena felt that to vest such powers in the Governor as contemplated in the article was a "reactionary" move.

Mr T. T. Krishnamachari, replying on behalf of the Drafting Committee, pointed out that the Governor could not act on his own but had to act on the advice of his Ministry.

The House passed without discussion Article 176 dealing with the President's power to direct the Governor to return a Bill, other than a money Bill, to the legislature for reconsideration.

The article says that when a Bill is reserved by a Governor for the consideration of the President, the President shall declare that either he assents to the Bill or he withholds assent provided that where the Bill is not a money Bill, the President may direct the Governor to return the Bill to the legislature of the State together with a message. The legislature shall then reconsider the Bill within six months from the date of receipt of the message. If the Bill is again passed by the legislature with or without amendments, it shall be presented again to the President for consideration.

The House adopted Article 83 (A) relating to disqualification of members of Parliament. Dr Ambedkar explained that this was a replica of an article already adopted to deal with similar cases in the provinces. The article provides that the President's decision shall be final but before he gives any decision, he shall obtain and act according to the opinion of the Election Commission.

The House adopted Article 127 (A) which provides that audit reports relating to accounts of a State shall be laid before the Legislature. Articles 210 and 211 (relating to Chief for a State and audit reports), drafted originally were deleted.

Article 197 (salaries of judges), on the lines of another article already adopted, was passed.

AREAS ADMINISTERED BY CENTRE

The House took up Part 7 of the constitution regarding the States mentioned in Part 2 of the Schedule 1, namely the Centrally administered areas (Part D Article 239 and Article 212) provides that the areas mentioned in the schedule should be administered by the President acting to such extent as he thought fit through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. The President should consult the Government concerned and ascertain in such manner as the President considered most appropriate the wishes of the people of the State to be administered.

Dr Ambedkar moved an amendment for the deletion of reference in the original article to Indian States. He said that provisions with regard to these States were being made in a separate schedule.

Prof Shibbanlal Saxena referred to the conditions in Ajmer-Merwara, Delhi and Coorg. Unless they decided about the future set-up, it was not proper to leave it to Parliament to frame the Constitution.

Mr Brajeshwar Prasad felt that in the interest of efficiency of administration there should be no change in the administration of the Centrally administered areas.

Dr P. R. Deshmukh pleaded for reconsideration of the article. The question of including these areas in provinces should also be gone into so that the people of the hitherto Centrally administered areas would share the same responsibility and have the same democratic set-up as the adjoining areas. This could be possible as large areas were being integrated or merged with other States or provinces. It was not in keeping with the spirit of the times, to perpetuate the existence of small islands of territory. Further the people in those areas must have a democratic system of administration.

FUTURE OF DELHI

Mr Vishwanath Das, former Premier of Orissa, said that these units should be merged with the neighbouring provinces. So far as Delhi was concerned, it could be treated on the lines of London with a council for the city or on the lines of Washington or Canberra.

Mr R. K. Sidhwa complained that the people of Delhi were not given even local self-government and there were four municipal bodies within greater Delhi. Even people in backward areas were given the right of provincial autonomy but Delhi citizens were denied the privilege of having popular administration.

The House adopted the article after closure was moved to the debate by Srimathi Durgabai.

Dr Ambedkar then moved an amendment replacing Article 213 with a new article relating to the creation or continuance of local legislatures or a council of advisers or Ministers. The article provides that Parliament and functions in each case as might be specified in the law".

Dr Ambedkar said that in the original draft the power of creating a body for legislative purpose and a council of advisers or Ministers was left to the President and the new article gave the power to Parliament.

REPRESENTATION FOR DELHI

Mr Deshbandu Gupta (Delhi) moved an amendment which provided for special representation for Delhi in Houses of Parliament. He did not move another amendment relating to the constitution for Delhi province.

In a 70-minute speech, Mr Gupta said that the population of Delhi had been disappointed. The decisions taken and promises given earlier were not fulfilled. There was a feeling among the people of Delhi that Delhi and the Centrally administered areas were receiving step-motherly treatment. So far, the people of the province had been denied autonomy. Delhi stood on a different footing from other Centrally administered areas inasmuch as its population was about 2m. The Central Legislature had been acting as Parliament for these areas. It was only fair that Delhi should get additional representation.

Mr Gupta complained that Delhi and other Centrally administered areas had not received "a fair deal from the House and from those in authority".

He criticized the attitude of the Drafting Committee and the authorities towards Delhi. Wherever a demand was made to liberalize the provisions and measures of autonomy to these areas, additional restrictions were placed in the constitution. Article 213 originally contemplated specifically a local legislature, but the amendment now moved by Dr Ambedkar stated that it might be a body which would act as legislature.

Replying to the argument that the amendment was drafted to cover other areas too, Mr Gupta said that it was unfair to treat Delhi and Panth Piploda on the same plane. The right course for the Drafting Committee was to treat Delhi as a separate unit, in view of the fact that other areas were likely to be amalgamated with neighbouring provinces.

Comparing the opposition of treating Delhi in the same way as the USA has dealt with Washington, Mr Gupta said that it was unfair to compare Delhi with Washington or Canberra. Delhi was a historic city and a civilization. Delhi was a commercial as well as an industrial town. It had not been built but was chosen as the capital whereas Washington was built as the capital of the USA before. they should not ignore the aspirations and requirements of Delhi and on that basis alone, it deserved a different treatment. New Delhi and Delhi were integral parts of the city.

Asserting that the difficulties and grievances of the people of Delhi province were genuine, Mr Gupta said that even in the local municipal bodies, the people had no voice. As regards service, Delhi was attached to East Punjab and the people of Delhi had no voice in the choice of officials. Similarly in the High Court in East Punjab 65% of the civil cases of value went from Delhi and yet Delhi's demand for a circuit court had been ignored. The way in which the East Punjab Government treated them had made them could not encourage the people of the province to entertain any suggestion of amalgamation of Delhi with that province.

NECESSARY MEASURES

Replying to the arguments that an amendment of the constitution was necessary to give Delhi province a constitution, Mr Gupta said that it should not be beyond the capacity of the constitutional pundits to evolve a way out. He urged that whatever constitution Delhi province was given it should be introduced simultaneously with the introduction in other parts of the country. He suggested that Parliament or the Constituent Assembly should bring in the necessary measures during the next session.

Pandit Nehru, indicating the Government's attitude, said: "Obviously the question of Delhi is an important one. It was for this reason that over two years ago this House appointed a committee for the purpose and normally speaking, the recommendations of a committee appointed by this House would naturally carry great weight and if possible be given effect to. But ever since that committee was appointed the world has changed, India has changed and Delhi has changed mightily. Therefore, to take up the recommendations of that committee regardless of these mighty changes that have taken place would be to consider this question completely divorced from reality.

"All of us sympathize very greatly with the citizens and representatives of Delhi who see that this great and ancient city should not be left out of the picture when the new constitution comes into effect. Therefore we have to give thought to it. Now giving thought to it, the first thing that comes up for consideration is that the situation in Delhi is not a static situation; it is a changing situation. It is far better to deal with it in a way which is capable of future change, i.e. by an Act of Parliament, rather than by fixed provisions in the Constitution".

COMMON FORMULA

Again, Pandit Nehru pointed out, these provisions did not deal only with Delhi but with other centrally administered areas and the like. It might be that more areas might come into the picture. Therefore, anything that was put in the Constitution must be something which applied to all, but that was very difficult today because those areas were completely different. It was frightfully difficult to find a common formula. For all these reasons it seemed inadvisable to put into the Constitution any precise from of approach to this question except to indicate that something should be done and leave it to Parliament to do it.

Dr Ambedkar's draft seemed to him to cover the entire group fairly. Pandit Nehru accepted the principle that at some later stage some kind of representation for these areas in the Central Legislature should be provided for somewhere or other in the Constitution. It was the Government's intention to bring forward some kind of a Bill to deal with Delhi in the course of this year. He understood

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IFFERENCES OF OPINION

ng the new article substituting 172, Dr Ambedkar pointed out hen the House discussed the n of the resolution of differ- between the Council of State e House of the People, it came conclusion that, having regard federal character of the Central ature, it was proper that those nces between the two Houses be resolved by a joint session suggested by some members that, instead of adopting the ture of a joint session, the should adopt the procedure ed by the Houses of Parliament tain under which the decisions House of Commons with regard particular Bill other than a y Bill would prevail in the final sis if and when the House of failed to agree or refused to to the proposals of the Com- after a certain period had ed.

ter consideration of the method, Dr Ambedkar, it was felt that procedure laid down in the Parliament Act for the resolution of differences between two Houses was more appropriate in the case of States. Consequently, the Drafting Committee had made a departure from the original article and the new article embodied the proposal that the decision of the more popular House representing the will of the people ought to prevail if the two Houses had not been able to reconcile differences of opinion by mutual agreement.

PROPOSAL FOR AMENDMENT

Mr T. T. Krishnamachari proposed an amendment suggesting a period of three months instead of two months for consideration of a Bill by the Council at the first stage when it was sent up by the Lower House. He felt that two months were inadequate and three months would be more reasonable. He explained that the time taken for a Bill to be returned to the Lower House would be three months from the date it was laid before the Upper House. It was merely an extension of the period and did not materially alter the scope of the new article.

Mr Brijeshwar Prasad opposed the article. He saw no reason for the deletion of the provision of a joint sitting. The House should be clear in its mind, he said, whether it wanted an Upper Chamber in the provinces. If there was need for a Second Chamber, then it must be vested with certain powers.

As a compromise he would, however, suggest the method of joint session and said that the Upper Chamber must be vested with the power of delaying legislation. The period of consideration by the Upper Chamber should therefore be extended to at least a year. Otherwise, the present system of parliamentary democracy in India "will lead to disaster".

AMENDMENT SUPPORTED

Prof Shibbanlal Saxena supported Dr Ambedkar's amendment. He suggested that there should be a provision for calling a meeting of the Council within two months after a Bill had been laid before it.

Mr Tajamul Hussain criticized Mr Prasad's observation regarding parliamentary democracy and greater power to the upper chamber and said that if the upper chamber were vested with more power, it would mean power of veto being given to a few nominated members. In democracy, the will of the people must prevail.

Mr Naziruddin Ahmed, opposing the article, argued that it would frustrate the object of a second chamber, namely, revision and delay. The utility of a second chamber was appreciated by many provinces, but if a second chamber was to function it should be given adequate powers.

Sardar Hukum Singh felt that the procedure laid down by the article would unnecessarily prolong consideration of legislative measures. A Bill had to be considered three times by the lower house and twice by the Legislative Council. It would delay legislation that might be required to be passed with some speed.

Dr P. R. Deshmukh urged the abolition of a second chamber. He said that if the object of the second chamber was merely to delay legislation, there was no need for this paraphernalia, and the expenditure of money and energy on this was not at all justified.

Pandit Kunzru said that the Legislative Council might be constituted in a way that it would be "the creature of the Government and the Lower House." The Upper Chamber would rarely seldom in a position to exercise independent judgment on any matter. As a rule it would reflect the opinions of the majority of the Lower House. He therefore felt that there was no case for having an Upper Chamber. If the House desired that there should be an upper chamber, he would suggest that its powers should not be curtailed to such an extent as to make it unable even to consider carefully the measures that might be sent up to it by the lower house.

Mr V. I. Muniswamy Pillai, Scheduled Caste representative from Madras, said that unless upper houses had an effective say in the passage of Bills, the interests of many communities might greatly suffer.

PROF SAXENA'S OPPOSITION

Prof N. G. Ranga (Madras) said that he was not in favour of second chambers at all. But as the House had decided in favour of having second chambers in certain provinces, their only purpose should be to act as a moderating or delaying factor.

Mr Syamanandan Sahay (Bihar) said that if adequate powers were not given to second chambers, it was better to have none. It was merely an extension of the period and did not materially alter the scope of the new article.

Mrs Renuka Ray (West Bengal) said that the purpose of delaying hasty legislation, for which the upper house were intended, could as well be served by the President who would have the power to send back such legislation to the Assembly. In many smaller provinces upper chambers would be an expensive luxury.

The majority having decided in favour of upper houses as revising chambers, he hoped some members sought to make them dilatory chambers. It would be an extremely retrograde measure to turn them into dilatory chambers.

At this stage the House accepted a closure motion and ended the 90-minute debate.

LAW MINISTER'S REPLY

Replying to the debate, Dr Ambedkar said that the article was modelled on Article 37 in the Australian constitution. In discussing the matter, three different questions arose. Firstly, how many journeys would a Bill have to undertake before the will of the lower house became paramount. Secondly, what should be the period allotted to the upper chamber for each journey, both going and coming back. It was proposed that the Bill should have two journeys. It might be possible to argue that more journeys than two ought to be allowed but that was a question of practical politics in the case of the first journey the period would be three months —he was accepting Mr Krishnamachari's amendment to that effect— and in the second case it would be one month.

Pandit Kunzru had said that the Drafting Committee had no fixed mind, that it was changing from moment to moment. He had referred to the original draft where undoubtedly six months had been laid down. Here again the period to be allowed was not a matter of principle at all. It was a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact it felt that even three months was too long a period but it was quite conceivable that a Bill like the Zamindari Bill, which had a large number of clauses, might emerge from the lower house and to provide for such exceptional cases it was thought that a period of three months was reasonable.

After all, asked Dr Ambedkar, what was the upper chamber going to be? It would be dealing with a Bill which had been sent by the lower chamber. It was not going to redraft the whole thing. It was not going to alter every clause. It was only certain clauses of public importance that it would deal with and for a limited legislative activity of that sort three months in the first instance was a long enough period and would certainly not curtail the legislative activity of a second chamber. For the second journey, it was felt that one month was quite enough.

The third question that arose was, what was to be the starting point for calculating the three months or one month. "Pandit Kunzru will forgive me for saying that he altogether failed to appreciate the importance of the changes which the Drafting Committee has made. Under the provisions as contained in Article 172 as it stands, I have not the slightest doubt, and the Drafting Committee has not the slightest doubt, that the powers of the upper chamber would have been completely negatived and nullified".

Explaining this point, Dr Ambedkar said that first of all it would have been possible under the original provision to say that the Bill must be passed by the upper chamber within the stated period from the passing of the Bill by the lower house. Secondly, it would have been possible to say that the upper chamber should pass the Bill in the stated period from the time of the reception of the Bill in the upper chamber. "Supposing we had accepted either of the two possibilities", Dr Ambedkar said, "the consequences would have been very disastrous to the upper chamber. The summoning of the upper chamber is entirely in the hands of the executive and it would have been perfectly possible for a dishonest executive to take advantage of this clause by not summoning the upper chamber at all. Supposing we had taken the reception of the Bill as the starting point, then also the executive could have chated the upper chamber by not putting the Bill on the agenda and thereby not giving the upper chamber an opportunity to consider it.

"We thought that this sort of procedure was wrong. Therefore, to protect the upper chamber, the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the receipt of the Bill, and they as an advisory body, the chance of most of the provinces electing to have second chambers.

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AMENDED ARTICLE PASSED

Pandit Kunzru, intervening, asked: "Does this childish explanation satisfy the hon'ble member himself?"

Dr Ambedkar: "If he likes to call my explanation childish, he may do so, but I have no doubt that the new clause is a great improvement on the original clause. If it does not satisfy him I am very sorry, but he did not raise any point to which I think I have not given an explanation".

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The House adopted the new Article 175. This article enables the Governor to return other than a money Bill for reconsideration by the legislature.

During the discussion, Mr Brajeshwar Prasad made an effort to persuade the House to vest in the Governor or the President the power to veto any legislation passed by the legislature.

Prof Shibbanlal Saxena felt that to vest such powers in the Governor as contemplated in the article was a "reactionary" move.

Mr T. T. Krishnamachari, replying on behalf of the Drafting Committee, pointed out that the Governor could act on his own but had to act on the advice of his Ministry.

The House passed without discussion Article 176, dealing with the President's power to direct the Governor to return a Bill, other than a money Bill, to the legislature for reconsideration.

The article says that when a Bill is reserved by a Governor for the consideration of the President, the President shall declare that either he assents to the Bill or he withholds assent; provided that where the Bill is not a money Bill, the President may direct the Governor to return the Bill to the legislature of the State together with a message. The legislature shall reconsider the Bill within six months from the date of receipt of the message. If the Bill is again passed by the legislature with or without amendments, it shall be presented again to the President for consideration.

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Article 197 (salaries of judges), on the lines of another article already adopted, was passed.

AREAS ADMINISTERED BY CENTRE

The House took up Part 7 of the constitution regarding the States mentioned in Part 2 of the Schedule 1, namely the Centrally administered areas. Dr Ambedkar (Article 212) provides that the areas mentioned in the schedule should be administered by the President acting to such extent as he thought fit through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. The President should consult the Government concerned and ascertain in such manner as the President considered most appropriate the wishes of the people of the State to be administered.

Dr Ambedkar moved an amendment for the deletion of reference in the original article to Indian States. He said that provisions with regard to these States were being made in a separate schedule.

Prof Shibbanlal Saxena referred to the conditions in Ajmer-Merwara, Delhi and Coorg. Unless they decided about the future set-up, it was not proper to leave it to Parliament to frame the Constitution.

Mr Brajeshwar Prasad felt that in the interest of efficiency of administration there should be no change in the administration of the Centrally administered areas.

Dr P. R. Deshmukh pleaded for reconsideration of the article. The question of including these areas in provinces should also be gone into so that the people of the hitherto Centrally administered areas would share the same responsibility and have the same democratic set-up as the adjoining areas. This could be possible as large areas were being integrated or merged with other States or provinces. It was not in keeping with the spirit of the times, to perpetuate the existence of small islands of territory. Further the people in those areas must have a democratic system of administration.

FUTURE OF DELHI

Mr Vishwanath Das, former Premier of Orissa, said that these units should be merged with the neighbouring provinces. So far as Delhi was concerned, it could be treated on the lines of London with a council for the city or on the lines of Washington or Canberra.

Mr R. K. Sidhwa complained that the people of Delhi were not given even local self-government and there were four municipal bodies within a radius of five miles. Even people in backward areas were given the right of provincial autonomy but Delhi citizens were denied the privilege of having popular administration.

The House adopted the article after closure was moved to the debate by Srimathi Durgabai.

Dr Ambedkar then moved an amendment replacing Article 213 with a new article relating to the creation or continuance of local legislatures or a council of advisers or Ministers. The article provides that Parliament might create or continue for any State (Centrally administered areas) a body "nominated, elected or partly nominated and partly elected, to function as a legislature for the State or a council of advisers or Ministers or both with such constitution, powers

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He criticized the attitude of the Drafting Committee and the authorities towards Delhi. Whenever a demand was made to liberalize the provisions and measures of autonomy to these areas, additional restrictions were placed in the constitution. Article 213 originally contemplated specifically a local legislature, but the amendment now moved by Mr Ambedkar stated that it might be a body which would act as legislature.

Replying to the argument that the amendment was drafted to cover other areas too, Mr Gupta said that it was unfair to treat Delhi and Panth Piploda on the same plane. The right course for the Drafting Committee was to treat Delhi as a separate unit, in view of the fact that other areas were likely to be amalgamated with neighbouring provinces.

Opposing the idea of treating Delhi in the same way as the USA has dealt with Washington, Mr Gupta said that it was unfair to compare Delhi with Washington or Canberra. Delhi had a history of its own and a civilization. Delhi was a commercial as well as an industrial town. It had not been built but was chosen as the capital whereas Washington was built as the capital of the USA. Therefore, they should not ignore the traditions and requirements of Delhi and on that basis alone, it deserved a different treatment. New Delhi and Delhi were integral parts of the city.

Asserting that the difficulties and grievances of the people of Delhi province were genuine, Mr Gupta said that even in the local municipal bodies, the people had no voice. As regards service, Delhi was attached to East Punjab and the people of Delhi had no voice in the choice of officials. In the High Court in East Punjab 65% of the civil cases of value went from Delhi and yet Delhi's demand for a circuit court had been ignored. The way in which the East Punjab Government had treated them could not encourage the people of the province to entertain any suggestion of amalgamation of Delhi with that province.

NECESSARY MEASURES

Replying to the arguments that an amendment of the constitution was necessary to give Delhi province a constitution, Mr Gupta said that it should not be beyond the capacity of the constitutional pundits to evolve a way out. He urged that whatever constitution Delhi province was given it should be introduced simultaneously with the introduction in other parts of the country. He suggested that Parliament or the Constituent Assembly should bring in the necessary measures during the next session.

Pandit Nehru, indicating the Government's attitude, said: "Obviously the question of Delhi is an important one. It was for this reason that over two years ago this House appointed a committee for the purpose and normally speaking, the recommendations of a committee appointed by this House would naturally carry great weight and if possible be given effect to. But ever since that committee was appointed the world has changed, India has changed and Delhi has changed mightily. Therefore, to take up the recommendations of that committee regardless of these mighty changes that have taken place would be to consider this question completely divorced from reality.

"All of us sympathize very greatly with the citizens and representatives of Delhi who see that this great and ancient city should not be left out of the picture when the new constitution comes into effect. Therefore we have to give thought to it. Now giving thought to it, the first thing that comes up for consideration is that the situation in Delhi is not a static situation; it is a changing situation. It is far better to deal with it in a way which is capable of future change, i.e. by an Act of Parliament, rather than by fixed provisions in the Constitution."

COMMON FORMULA

Again, Pandit Nehru pointed out, these provisions did not deal only with Delhi but with other centrally administered areas and the like. It might be that more areas might come into the picture. Therefore, anything that was put in the Constitution must be something which applied to all, but that was very difficult today because those areas were completely different. It was frightfully difficult to find a common formula. For all these reasons it seemed inadvisable to put into the Constitution any precise from of approach to this question except to indicate that something should be done and leave it to Parliament to do it.

Dr Ambedkar's draft seemed to him to cover the entire group fairly. Pandit Nehru accepted the principle that at some later stage some kind of representation for these areas in the Central Legislature should be provided for somewhere or other in the Constitution. If was the Government's intention to bring forward some kind of a Bill to deal with Delhi in the course of this year. He understood that the Government could not do so unless the Constitution itself was passed or the Constituent Assembly enabled them to do so.

The debate had not concluded when the House adjourned till Tuesday.—PTI.

2-8-49.

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National Herald

SECOND-CHAMBER FANTASY

The Constituent Assembly, it has seemed to us for quite a long time, works in fits of absent-mindedness. Mr. Kunzru has called the assembly fickle-minded, a charitable euphemism that does not explain much charlatanry. But we could think of nothing more crazy than the craze for second chambers, so distasteful even to the Abbe Sieyes who had a flair for constitution-making. In the groping for more adjuncts of power and following the approval by the Constituent Assembly of article 148 some time ago, in consonance with the wishes of members of the assembly belonging to six of the provinces to whom the choice of a second chamber had been left, Dr. Ambedkar introduced in the present session a three-piece fantasy. He moved an amendment to article 148A empowering the parliament to provide by law for the abolition of the second chamber of a state having such a chamber or for the creation of such a chamber in a state having no such chamber, if the legislative assembly of the state passes a resolution to that effect in a prescribed manner. There was some opposition to the scope given for the creation of new second chambers but nobody seems to have realised that the abolition of an existing second chamber would become an issue at every election. Similarly, instead of laying down in the constitution, as under article 150 of the draft, provisions for the constitution of second chambers Dr Ambedkar moved a new article 150 leaving it to the parliament to decide the allocation of seats in the second chamber of a state, the manner of choosing persons to fill the seats the qualifications of persons chosen and the qualification of voters. Whatever may have been the difficulties, the Drafting Committee should not have sought to evade its responsibility and the Constituent Assembly to forfeit its. It was absurd on the part of Dr. Ambedkar to argue that since some other matters have been left to the parliament it might as well look after this. It would be straightforward to invest the parliament with legal sovereignty to allow it to prolong its life as it wills like the long parliaments of Britain. It was left to the president to intervene effectively and press for the formulation of a definite proposal to be included in the draft constitution. With the composition of second chambers still vague, Dr. Ambedkar moved a substitute article 172 laying down the delaying powers of a second chamber. This, Dr Ambedkar claimed, was to make the second chambers less ineffectual than they would be according to the draft constitution. It is not necessary here to discuss whether the article is based on the Parliament Act of 1911 or on article 57 of the Australian constitution, whether two journeys of a bill from the first chamber to the second chamber are enough or whether a first delay of three months and a second delay of one month is not better than the six months' delay as provided for in the draft. For we are opposed to second chambers in any shape in the province.

The arguments against second chambers have been sufficiently enumerated in the classics on constitutions and are widely known. Members of the Constituent Assembly forgot to bear in mind one clear distinction in arguing for second chambers, even when, like Mr Ranga, the Andhra Gracchus, they felt apologetic though very submissive about it. There are valid reasons for a second chamber in the sovereign legislature of a country, particularly in the central legislature of a federal state, in a case like India where provinces are coequal with sub-nations, like Canada where French and British claims had to be adjusted, like South Africa where the Boer and the British races had to be welded into a state or like the USA where it was almost an original sin of constitutionalism. The arguments that might be advanced in favour of a second chamber at the centre in India have been fantastically and with considerable twist advanced in favour of second chambers in the provinces. The British had good reasons for imitating us into bicameralism for the protection of interests conflicting with nationalism. At the present day bicameralism in Bombay would mean protection for industrial interests, in U.P. and Bihar, for the remnants of feudalism, in Madras or elsewhere for the conservative forces which may not find salvation under the suffrage of the people. It has been argued that adult suffrage requires the delaying check of a second chamber. If we have enough faith in adult suffrage, it would be dangerous to seek to fetter the power it will invoke. For conflicts will become inevitable and, while Socialist Britain lacks only courage and not conviction for attacking the House of Lords, the peoples of the Indian provinces under the spur of frustration will sweep away constitutional snobbery. The difficulty of arriving at a formula for the constitution of second chambers shows that there is no definite picture of their purpose, no valid reason for their existence and no popular impetus for their creation. It is sad to think that our leadership, instead of giving a definite lead against these costly barriers to popular will, has chosen to be indifferent in the face of a stampede to superfluous glory. The second chambers, it is claimed, will be houses of the elect but even the elect will have to be soaked in party politics. A Radhakrishnan will have no voice on the sales tax and a Raman will be tongue-tied on agrarian reform. The article in the draft constitution on the composition of second chambers reveals that there is much confusion about the place they should occupy. Even Dr Ambedkar stated in the January session of the Constituent Assembly that second chambers were being introduced purely as an experimental measure, as if we have not had enough experiments in this direction since the Montford Reforms. The argument he advanced for the changes in the powers of second chambers to make them more or less ineffectual—it is not clear what is what—showed the elasticity of logic when constitution-making had ceased to be the urge of the people and become punditry. Mr. Kunzru characterised some of these arguments as childish and we agree with him on this point.

EMERGENCY POWERS FOR UNION'S PRESIDENT

FUTURE SET-UP OF DELHI

C.A. APPROVES MORE ARTICLES

The Constituent Assembly yesterday approved emergency powers for the President of the Indian Union.

If the President is satisfied that a grave emergency exists whereby the security of India or any part of Indian territory is threatened by war or external aggression or internal disturbance, he may, by proclamation, make a declaration to that effect.

Unless extended by Parliament, the proclamation would cease to operate after two months. The original period was six months but was subsequently reduced to two months.

Among those who supported the Article were Prof. Shibbanlal Saksena, Mr Naziruddin Ahmed, Mr Mahavir Tyagi and Mr Jagat Narain Lal. Prof. K. T. Shah said that the Article incorporated the "worst features of centralized authority" and sought to empower the President to take action that would not be consistent with democracy or responsible government.

Mr T. T. Krishnamachari, replying on behalf of the Drafting Committee, said that while giving government adequate powers to face an emergency, the Drafting Committee had provided enough safeguards to ensure that the popular will would prevail under all circumstances.

The House earlier adopted three other Articles, all of them relating to Centrally-administered areas.

Resuming the general debate on the amendment moved by Dr Ambedkar, replacing Article 213 with a new Article on the creation of local legislatures for the Centrally-administered areas, Pandit Thakurdas Bhargava said the change in the new Article, inasmuch as it gave the right to Parliament to create a legislature, was a salutary one, but he was against giving Parliament power to appoint an Advisory Council, which might not be elected and also a legislature which was not fully representative of the people.

Referring to the future administrative set-up of Delhi province, Pandit Bhargava said that for ages it had formed part of Hariana province in East Punjab. It was, therefore, right and proper to merge Delhi with East Punjab. The capital of East Punjab could be located in Old Delhi. As for New Delhi, it could be separated from Old Delhi and left to the Central Government to make a model town of it. If this was not possible, Delhi province should be given a real legislature in which the people of the province could have an effective voice.

Merger With E. Punjab Urged

Mr Mahavir Tyagi (U.P.) said that after swaraj had been achieved it was unfair to keep the "islands of slavery" whose people had been denied the elementary right of representation. So long as the citizens of Delhi were granted adequate voice in the day-to-day administration, there could be no serious objection to the form of the set-up. It was the duty of the Constituent Assembly to guarantee that people residing in these small areas enjoyed equal representation in local administration. If that was not done, they would be charged as being partial and unfair to the people of these areas. So far as Delhi province was concerned, it should be merged with East Punjab.

Mr Mohanlal Gautam (U.P.) endorsed the view that Delhi should go to East Punjab and said the first problem before the Punjab Government was the rehabilitation of its political life. He suggested that after separating New Delhi from Delhi province, the remainder should be annexed with East Punjab, which could serve as its capital. New Delhi should be administered directly by the Central Government.

Ch. Ranbir Singh (East Punjab) supported the plea for the merger of Delhi with East Punjab. He said that he was confident that 90 per cent of the people in the rural areas of Delhi would agree for merger. Of the urban population of Delhi, he said, more than five lakhs were Punjabee refugees who would like Delhi to be made part of East Punjab. He urged that this question should be decided by the Constituent Assembly and not left to Parliament.

Plea For Separate Province

Maulana Hifzur Rehman (U.P.), making his maiden speech in the Assembly, declared that both New Delhi and Old Delhi and the rural now forming part of Delhi province should be made a separate province, enjoying as much freedom and democracy as existed in any other province. He did not agree with Pandit Nehru's plea for separating New Delhi from the old.

He said that Delhi did not enjoy any democratic rights before freedom and Delhi's citizens were not going to accept anything that did not give them full freedom.

Referring to the plea for merger, he said, Delhi had never formed part of the Punjab or the U.P. For centuries it had retained its separate and independent status. It had a civilization and history of its own and the question of its being a small province did not arise. It stood on a different aim from among other Centrally-administered areas.

Maulana Hifzur Rehman said that he was confident that even the refugees who had come to Delhi would agree to the creation of a separate and independent province. He urged that if this question was to be left to Parliament to decide there should be a tentative plan of Delhi's future set-up before them.

Mr Ramnarain Singh (Bihar) said the future of Delhi should only be decided by the people of Delhi. Neither the representatives of East Punjab and the U.P. nor even the Constituent Assembly had a right to decide this question. Justice demanded that Delhi citizens should be given full opportunity to voice their views in the matter. The representative of Delhi, Mr Deshbandhu Gupta, was the fit person to voice the wishes of the people. He wanted the administrative set-up in Delhi to be a model one for other provinces in India. There should be a people's administration with full democratic rights.

At this stage a closure motion was moved but was defeated.

Mr B. Das (Orissa), supporting Dr Ambedkar's amendment, said that Centrally-administered areas were anachronisms created by the British. In future, there should be no such areas, the only exceptions being the strategically placed Andamans and Nicobars.

Delhi, Mr Das felt, should be merged with the U.P., as the culture of Delhi was the culture of Allahabad or Lucknow and not the culture of the Punjab. Ajmer-Merwara and Panth Piploda rightly belonged to Rajasthan. Coorg should be merged with Mysore although in defence of Coorg he would say that Coorg had not lived on charity, unlike Delhi, which received an annual subsidy of about Rs 14 crores to run its normal administration.

Division Suggested

Mr Naziruddin Ahmed (West Bengal) suggested that Delhi province should be divided into three parts. The villages to the east of the Jumna should be made over to the U.P. Other villages near about Delhi should be amalgamated with East Punjab. The two cities of New Delhi and Old Delhi should be run by a corporation.

After the Article had been under discussion for an hour and half today, the House accepted a second closure motion.

Ambedkar's Reply

Replying to the debate, Dr Ambedkar, Chairman of the Drafting Committee, said this was not the place where Mr Deshbandhu Gupta's amendment could properly come in. The amendment also raised a question of principle, namely, weightage in representation to certain areas. At one stage this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. But it might be possible that if some territories of India were unable to obtain even a single representative by reason of Article 67 (composition of Houses of Parliament), some special provision would have to be made because we cannot allow, by reason merely of a mathematical rule, any territory to be deprived of representation. At the appropriate stage this point would be considered and a fresh Article on the lines of 67(A) might be incorporated.

The House accepted Prof. Shibban Lal Saksena's amendment deleting the words "notwithstanding anything contained in this constitution" in Dr Ambedkar's original motion. Mr Deshbandhu Gupta withdrew his amendment and the Article, as amended by Prof. Saksena, was passed.

The Assembly adopted a new Article 213(A) providing for high courts for Centrally-administered areas. The Article also provides that if it is not possible to allot a high court exclusively for a Centrally-administered area, Parliament may declare a certain other high court situated in an adjacent area as a high court for that particular area.

The House passed Article 214, stating that until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this constitution. The arrangement with respect to revenues collected in Coorg and expenses in respect of Coorg shall continue unchanged until other provision is made by the President.

EMERGENCY POWERS FOR PRESIDENT

Dr Ambedkar moved Article 275 specifying the President's emergency powers. If the President is satisfied that a grave emergency exists whereby the security of India or of any part of Indian territory is threatened by war or external aggression or internal disturbance, he may by proclamation make a declaration to that effect. The proclamation of emergency may be revoked by a subsequent proclamation. It shall be laid before each House of Parliament and shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

If any such proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to above and the proclamation has not been approved by a resolution passed by the House of the People before the expiration of the period, the proclamation shall cease to operate at the expiration of 30 days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of that period resolutions approving the proclamation have been passed by both Houses of Parliament.

A proclamation of emergency declaring that the security of India or of any part of the Indian territory is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger of it.

Dr Ambedkar explained that one of the changes in the new article as compared to the original draft was the use of words "external aggression or internal disturbance" instead of "domestic violence." It was thought much better to use the new wording because "domestic violence" might exclude external aggression which was not actual war or was less than war. Another change was that originally the proclamation was to cease to operate at the expiry of six months. It was now proposed to reduce this period to two months. Six months was felt to be too long a period.

Kamath's Amendments

Mr H. V. Kamath (C.P.) moved a number of amendments, one of them stipulating that the President should not issue a Proclamation of Emergency except on the advice of his Council of Ministers. By another amendment he wanted that the President should not have the power to issue a proclamation of emergency if he was merely satisfied that there was imminent danger of war, external aggression or internal disturbance. He should be allowed to exercise that power only in the event of their actual occurrence. Otherwise there was a possibility of that power being abused.

Mr Kamath said that he was unable to find similar powers being given to any head of State under any other democratic constitution. The closest approximation—in a milder form—was Article 48 of the Weimer Constitution of the Third German Republic. It was by abusing the emergency powers conferred by this article that Hitler was able to destroy the German Republic. "I would, therefore, earnestly plead with this House that it should bring to bear upon this chapter all the wisdom that it is capable of."

Initiating a general debate, Prof. Shibbanlal Saksena gave general support to the Article and said that there could be no apprehension that the powers which had been given to the President by the Article would make him an autocrat. He pointed out that subsequent Articles provided that in an emergency, Union Executive had power to give directives to the States and the Union Parliament had the power of legislation over the State subjects. In the present conditions in the country, it was necessary to vest the Centre with power to act in a state of emergency and the Article provided the minimum powers. Otherwise, there would be no control over State legislature and Government at times of emergency.

Country's Security

Mr Brajeshwar Prasad felt that the provisions were too inadequate and halting for the needs of the hour. He would like to add some more conditions of emergency to the three categories mentioned in the Article. He suggested that "economic crisis" and "subversive elements" that were likely to threaten the security of India should be sufficient ground for the President to issue a proclamation of emergency. He asked whether it was the intention of the House that the security of India should not be protected if it was threatened by other issues than war or external aggression or internal disturbances. Power must be vested in the President without restriction to act when he felt that the security of India was threatened. Security of India was much more important than provincial autonomy.

Prof. K. T. Shah viewed with "grave concern" the tendency to clothe the Central Government with excessive authority. The Article now proposed by Dr Ambedkar, he said, incorporated the worst features of centralized authority. It sought to empower the President with action that could not be consistent with democracy or responsible government. The term 'internal disturbance' mentioned in the Article was very difficult to define, and it appeared that on the slightest fear of disturbance in the internal management of the State the Executive the President to declare a state of emergency. It was not even the actual occurrence that was sought to be guarded against, but even possible danger of it in the opinion of the executive was a sufficient ground to issue a proclamation. It was utterly undistinguishable from the Ordinances of 1942 which empowered the Government to act where there was breakdown of law being broken. "If this Government which we are constituting is not to be distinguished for liberalism, tolerance and freedom of thought and expression in any way from the preceding Governments," remarked Prof. Shah, "we are not true to the pledge that has been given to the people of the country that when *swaraj* comes, it will be really *Swaraj*."

Prof. Shah pointed out that there was no provision for Parliament to disapprove or reject any proclamation issued by the President nor had Parliament the power to annul it. It was also quite possible that the President who was not obliged to accept the advice of the Ministers acted on his own to declare a state of emergency. It might also happen particularly when Parliament was on the eve of dissolution that the party in power might take advantage of the provision. He, therefore, considered the absence of provision of the right of Parliament to disapprove the proclamation as a serious omission. The security of India should not be an excuse for excessive authority being vested in the chief executive.

Need For Counsel

Dr P. R. Deshmukh supported Mr Kamath's amendment in so far as it related to consultation with the Council of Ministers. He said that the House was clothing one particular individual with enormous powers and the powers of emergency could be utilized in his own individual discretion. There was nothing in the Article to show that it would be necessary for the President to consult anybody. No criterion of emergency was also mentioned. It was a matter of individual judgment and discretion. Individual judgment could err very often. It was, therefore necessary to provide that before an emergency was declared the advice of the Council of Ministers should be sought. It might be unthinkable that the President would be irresponsible to act without the advice of Ministers but it was not inconceivable that given a set of circumstances he might come to the conclusion irrespective of concurrence of the Ministers that an emergency had arisen. As the Article stood, there was no guarantee that he would consult the Ministers and it was necessary to stipulate it particularly in such an important provision.

Kazi Syed Karimuddin opposing the Article said that the Article rendered provincial autonomy as "a sham institution." It would also mean that any other party than the one which was in power would not be allowed to rule the provinces. He said that if there had been any other Government than the Congress Government in West Bengal, the Congress Party at the centre would have issued a proclamation in Bengal. He feared that in future no other party would be allowed to come up in the provinces. He, therefore, pleaded that the House should not consider the provision in a "state of nervousness" that had been caused by the present conditions in some parts of the country.

Mr Naziruddin Ahmed (Bengal) supporting the Article, said that he felt that there were real dangers threatening the internal peace of the country apart from threats of war. It was necessary to guard against general disorder and the necessity for emergency provision should not be denied.

Mr Tajamal Husain opposed the Article and supported Mr Kamath's amendment. He said that the President must have power, but the interest of the people must be safeguarded.

A Stronger Centre

Mr Mahavir Tyagi wanted that the Centre should be made stronger. He contended that the present Article was the only effective provision in the constitution which bound the units together. There was no other binding provision in the constitution by which the Centre could exercise overall powers. The three categories mentioned in the Article, namely, war or external aggression or internal disturbances, were only illustrative and explanatory, and were not exhaustive. It did not mean that only in these three contingencies, the President could issue a proclamation of emergency. Outbreak of violence, or revolt or any other conditions as serious as internal disturbances could be sufficient ground for the President to declare a state of emergency.

He refuted the suggestion that democratic rights of the people were overridden by the Article. On the other hand, he contended, the Article was intended to guarantee the rights and protect them from internal disturbance or external aggression. The President or the Ministers were not dictators. They were the elected representatives of the people. It was the President in consultation with the Ministers who would issue a proclamation India should be treated as a unit and a trouble in any part should be treated as a danger to the whole country. It was the duty of the Centre to see that absolute peace prevailed throughout the country.

Mr Jagat Narain Lal supported Dr Ambedkar's Amendment. The emergency powers proposed to be given to the President were very necessary. They should not be compared to Section 93 of the old Government of India Act. That section was intended by a foreign government to snatch away what little powers had been conceded by them to popular representatives. The emergency powers in the draft constitution, on the other hand were sought to be given to the President to preserve the nation's independence.

"A Necessary Evil"

Mr T. T. Krishnamachari, replying to the debate on behalf of the Drafting Committee, said: "These emergency powers have got to be tolerated as a very necessary evil. Without them it is well nigh impossible that all our efforts to frame a constitution might ultimately be in jeopardy. The constitution itself might be in danger unless adequate powers are given to the executive to safeguard the constitution."

Mr Krishnamachari said that he was one of these who believed that it would be well if a constitution could be framed without providing in it powers to the executive to abridge the liberties of the citizen or do anything which was either unconstitutional or extra-constitutional. But he recognized that in times like these, when there were not merely threats of war and internecine disturbances but also other calamities which were likely to arise due to economic conditions, the framers of a constitution would be guilty of grave dereliction of duty if they did not provide safeguards for protecting the constitution. The Drafting Committee, while ensuring that Government had adequate powers to face an emergency which might very well threaten the constitution and might practically make this country come under a rule which was completely unconstitutional, had at the same time provided enough safeguards to see that the popular will would prevail "whatever might be the conditions under which we have to function under these emergency provisions."

Mr Krishnamachari added that another aspect of the matter which critics of the constitution would have to take was that a written constitution was bound to have all these defects. If they did not envisage the possibility of there being some distress which would upset the constitution and provide against that contingency, it might be that whoever happened to be in power at that time might find themselves unable to act. He would ask Mr Kamath and Prof Shah to read the history of the American constitution. It was a very wide interpretation of that portion of the constitution which gave the President of the U.S.A. the powers of the Commander-in-Chief which saved the U.S.A. during the civil war and enabled the economy of that country to be geared to the war effort during World War I.

He would ask "those who criticize these provisions and would like people outside to know that they have stood as champions of liberty against a few people who want to encircle this country by a constitution which would give dictatorial powers to the executive" to consider the provisions in several other constitutions, particularly in the French constitution. Even in a country like England, which had an unwritten constitution, in October 1920 Parliament passed an Emergency Act whose scope and comprehension surpassed any of the acts that had been passed by the British Government in India. The British Emergency Act was not brought into being for the purpose of meeting a foreign enemy or a state of affairs which threatened to upset the constitution as such but to meet certain grave economic consequences that would arise.

Parliament's Powers

Mr Krishnamachari explained that the proposed provisions in no way suspended Parliaments power. Parliament had always the right to call into their proper perspective and it would be seen that there was nothing in them that was seriously objectionable.

Replying to Mr Kamath's point that the Article did not ensure that the President was to act on the advice of his Council of Ministers in proclaiming an emergency, Mr Krishnamachari said: "The whole scheme, as we envisage it, is that the President is only a constitutional head and clothing more. The President can exercise his powers only on the advice of his ministers." If the President assumed dictatorial powers, he added, he could be impeached and thrown out of office according to Article 50 and subsequent articles. The House rejected Mr Kamath's amendments and adopted the article as moved by Dr Ambedkar.

The Assembly then adjourned.—P.T.I.

A. B. Patrika 3-8-49

UPPER HOUSES IN STATES

THE DRAFTING COMMITTEE never gave any convincing argument in support of its recommendation that the States (i.e., the Provinces) should have bicameral legislatures. Subsequently members of the Constituent Assembly from six Provinces — West Bengal, Bihar, U.P., Madras, Bombay, East Punjab —met separately and came to the conclusion that there should be Second Chambers in their respective Provinces. So far as we know, they never took the trouble of explaining to the public why they could not rest content with a unicameral legislature. In West Bengal, at any rate, the public are quite in the dark as to the reasons lying behind this decision of their representatives. The establishment of Second Chambers in several Provinces, was one of those features of the Act of 1935 which provoked almost unanimous resentment. Why Congressmen have suddenly changed their views we do not know. Their apparent unwillingness to justify this repudiation of the past is inexplicable. Nor it is easy to understand why the luxury of having a Second Chamber should be confined to six Provinces. If the two truncated border Provinces cannot dispense with this luxury, why should Orissa and C.P., for example, forfeit it?

There is a strong feeling in the country that Upper Houses in State Legislatures are unnecessary, even harmful. The growing tendency towards centralisation is making serious inroads into Provincial Autonomy and Provincial legislatures are losing their importance in the constitutional structure. There is, therefore, no necessity for strengthening them with the addition of Second Chambers. In a Federation where all the emphasis is on the Centre, a bicameral State legislature means unnecessary complication, waste of time and squandering away of money.

What purposes, if any, are these Upper Houses intended to serve? It is useless to refer to the House of Lords in democratic England. That majestic chamber has its roots in immemorial traditions which play a vital part in British public life. Moreover, Britain's social system ensures the elevation to the House of Lords of men who acquire eminence by dint of talent and experience in different fields. These factors are absent in our country. A few lines in the Constitution cannot create traditions, nor can they attract to the Provincial Upper Houses —impotent upstarts in the constitutional sphere —men and women whose advice on public affairs would be heard with respect by the people. It is useless, also, to refer to the Upper Houses in unitary countries like France. There the legislature is supreme; it deals with all problems of national life, including war and peace. The issues at stake are vital and demand cautious deliberation by two chambers. Our State legislatures will deal with comparatively unimportant local problems, all vital issues of national importance being left to the Centre. Such local problems do not demand that cautious deliberation, that delayed movement, which is the fundamental justification of bicameralism.

There is a suspicion—we believe, a widespread suspicion—that the Upper Houses in State Legislatures are intended to be utilised for the purpose of stifling the voice of the people. This suspicion is explained, if not justified, by certain observations made by some members in the Constituent Assembly debates. One member said: "After the inauguration of the new Constitution on the basis of adult franchise, it would be risky to vest all powers in the hands of Lower Houses." If the constitution-makers are really afraid of adult franchise they should say so publicly and frankly. It is dangerous to introduce adult franchise and to make provision at the same time for nullifying its effects.

Several speakers were fully conscious that Second Chambers were out of place, but their speeches were halting and too anxious for compromises. Dr. Deshmukh said that "if the object of the Second Chamber was merely to delay legislation, there was no need for this paraphernalia, and the expediture of money and energy in this regard was not at all commensurate with the importance of functions that had been allotted to it." This is a point of which the constitution-makers have not taken proper notice. Originally it was intended to resolve differences between the two Houses by joint session. Under the new Article moved by Dr. Ambedkar and accepted by the Constituent Assembly on August 1, the decision of the Lower House representing the will of the people will prevail in case the two Houses fail to reconcile their differences by mutual agreement. That Article limits the power of the Upper Houses to delay legislation passed by the Lower House to three months in the first instance and one month in the second. Is there any justification for "this paraphernalia, and the expenditure of money and energy" when the competence of the Upper Houses is so severely restricted? Dr. Ambedkar gave an elaborate explanation in support of his view that "the new clause is a great improvement on the original clause." Pandit Kunzru described this explanation as "childish". Whether the explanation is "childish" or wise is a matter of opinion; but there is no doubt that Dr. Ambedkar's "new clause" leaves no justification whatever for the establishment of Second Chambers.

So far as the composition of the Upper Houses is concerned, the Constituent Assembly has transferred its own task to Parliament. The allocation of seats, the manner of choosing members, the qualifications of persons to be chosen, the qualifications of voters—all these matters will be decided by Parliament at a future date. It is strange indeed for a constitution-making body to leave undecided the composition of a legislative body. Our constitution-makers are in a hurry. The Drafting Committee is perplexed on account of differences of opinions. The President of the Constituent Assembly is overwhelmed by amendments. The wisest course is, therefore, to transfer controversies to the future. We can suggest a better solution of this problem. Let us agree not to have Upper Houses at all.

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STATE ACQUISITION OF PROPERTY

C.A. CONGRESS PARTY YET TO TAKE DECISION ON COMPENSATION

OWNERS' FUNDAMENTAL RIGHTS INVOLVED

(By Our Special Representative)

NEW DELHI, Tuesday.—Few articles of the Draft Constitution which is now being hammered into shape have caused greater headache to the constitution-makers than that relating to the right to property and the question of compensation in case of compulsory acquisition of property.

Cabinet Ministers, provincial Premiers and constitutional experts, who are wrestling with it, hope to evolve a formula which will be generally acceptable. Special importance is attached to this issue because foreign investors and the money market in India are anxiously awaiting the result of the confabulations in New Delhi.

So far as past commitments go, both the Congress and the Nehru Government have made their attitude on the subject clear. The point of interest is whether the proposed provision in the Constitution will translate these pledges. The view of the average property-owner is that the various fundamental rights such as those guaranteeing the right of free speech and free association will have a meaning only if the basic right to property is conceded.

The issue was boldly faced by the Congress in its election manifesto issued on December 11, 1945. It stated 'inter alia', "The reform of the land system, which is so urgently needed in India, involves the removal of intermediaries between the peasant and the State. The rights of such intermediaries should, therefore, be acquired on payment of equitable compensation."

This pledge of equitable compensation was embodied in the Government of India's resolution on the industrial policy issued on April 6, 1948. It stated: "While the inherent right of the State to acquire any existing industrial undertaking will always remain, and will be exercised whenever public interest requires it, the Government have decided to let existing undertakings in these fields develop for a period of ten years, during which they will be allowed all facilities for efficient working and reasonable expansion. At the end of this period, the whole matter will be reviewed and a decision taken in the light of circumstances obtaining at the time. If it is decided that the State should acquire any unit, the fundamental rights guaranteed by the Constitution will be observed and compensation will be awarded on a fair and equitable basis."

This pledge was even more clearly reiterated on April 6, 1949, in a statement Pandit Nehru made to Parliament on foreign capital. He gave the assurance that "if and when foreign enterprises are compulsorily acquired, compensation will be paid on a fair and equitable basis, as already announced in the Government's statement of policy."

The Congress Party in the Constituent Assembly which held an inconclusive discussion on the subject on Monday will review the matter again tomorrow. Those members of the Party who have studied past pledges feel that fair and equitable compensation has to be assured in respect of all types of property including landed property. Further, that this right will have to be made justiciable to inspire confidence among foreign and Indian investors. Those M.C.As who are opposed to such a provision being made in the Constitution regarding compensation for property compulsorily acquired by the State are in a minority. It is expected, however, that this small section, too, will follow the lead of Pandit Nehru and Sardar Patel.

THE STATESMAN

DELHI, AUGUST 3, 1949

UPPER HOUSES

India's Constituent Assembly has lately run into complications which illustrate the difficulty of satisfactorily concluding the second reading of the Draft Constitution by August 15. It has considered the Articles on the constitution and powers of Upper Houses in the States (i.e. provinces and princely units)—but only returned the first to the Drafting Committee and settled the second in impromptu fashion, eyed askance by two quite different sorts of dissentients.

The place of a second Chamber in a modern Constitution is certainly debatable. Most theorists argue the advantages of a Chamber of revision, so composed as to stand above the polemics of the day and be able to remedy the defects of hastily drafted legislation. India, perhaps unfortunately, has never really known such a body. The old Council of State, curiously constituted and sometimes still more curiously composed, was not impressive; debates in provincial Legislative Councils are on rare occasions superior to those in the corresponding Assemblies, but not often. Advocates of pure democracy have denounced their mere existence as a reactionary attempt to stifle the people's will; experience of European second Chambers, especially in France, was not uniformly happy; scrutiny of India's abortive Federal Constitution of 1935 tended to confirm adverse views.

This state of uncertainty was reflected in the Draft Constitution. The constituent States, it was thought, should decide for themselves whether to have an Upper House or not; but, if they decided in favour, its Constitution was elaborately laid down. After 21 conflicting amendments had been submitted, caution supervened, perhaps assisted by criticism, in debate on other Articles, of the extensive powers already assumed by the Centre; under the Draft, for example, a centrally-appointed Governor would nominate one-sixth of the members of a State's Legislative Council. Dr Ambedkar on Saturday accordingly proposed to leave the whole matter to Parliament. Parliament (sitting as the Constituent Assembly) not unnaturally demurred. Apart from a feeling that the Drafting Committee had not done its duty and now seemed to be proposing that the Constituent Assembly should be as lax, the procedure seemed anomalous. Representation in the U.P., for example, might be laid down on a general all-India pattern; but it was hardly Parliament's place, nor had Parliament the knowledge, to legislate ad hoc.

Similar uncertainty seemed to prevail over Legislative Councils' powers. The original proposal, that in case of conflict the two Houses should vote in joint session, was dropped as conferring too great power on the less democratic. The mere suspensory vote substituted, however, is even more drastic in its limitation of revisory power than Britain's Parliament Bill, itself contentious; and yet it was attacked by certain members as undemocratic. If an Upper House is worth having, it must be enabled to do its work. Three months in the first instance seems the bare minimum for efficient scrutiny of complicated measures hastily drafted—the very type of legislation an Upper House is designed to revise. Indeed the two periods adopted might prove an insufficient safeguard against mere uninstructed stubbornness by the Lower House, arising from no weightier cause than simple jealousy.

On that point, however, a decision has been taken. The other remains in abeyance. If deadlock of opinion continues, a possible solution might be to let each State which decides to have a Legislative Council devise its own with Parliamentary approval to eliminate gross discrepancies. Whatever the eventual solution arrived at, the discussions emphasize the need for deep pondering and ample debate over such important questions.

Hindustan Times 3·8·49

SPECIAL SECURITY POWERS FOR PRESIDENT

PARLIAMENT TO BE CONSULTED

PROVISION TO PROTECT STATE IN TIMES OF EMERGENCY

C.A. DEBATE ON FUTURE STATUS OF DELHI

(By Our Special Correspondent)

NEW DELHI, Tuesday.—Fierce criticism of the provision empowering the President of the Union to declare a state of emergency was heard in the Constituent Assembly today.

The provision, however, did not lack supporters, who were equally impassioned in their demand for full powers to the Executive to enable it to deal with any threat to the security of the country caused whether by war or external aggression or internal disturbance.

The supporters, of course, had the day, as the article which has a pivotal position in the whole chapter dealing with emergency powers, was adopted even without Dr Ambedkar having replied to the debate.

On behalf of the Drafting Committee, Mr T. T. Krishnamachari painstakingly explained that it was the duty of the makers of the Constitution to provide for this protection against any danger to it. It was true that the Executive would have the powers of a dictatorship when an emergency was declared. But this would be constitutional dictatorship necessary to safeguard the Constitution. Parliament's powers were to be preserved, and a proclamation of emergency would not be in force for more than two months without Parliament being consulted. There was thus no danger to civil liberties, and there should also be no fear of a permanent dictatorship being established.

Though Dr Ambedkar was willing to supplement this explanation the

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Chair ruled that there was no need for a further reply and the article was passed.

Critics of the provision numbered among them Prof. Shah and Mr Kamath. Mr Kamath's main fear was that since consultation with the Cabinet was not made obligatory on the President he might become a dictator in the same way as Hitler. Prof. Shah wailed over the curtailment of Parliament's powers. Other speakers in

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C.A. PROCEEDINGS

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favour of this point of view had nothing new to add.

On the other side were ranged Messrs Tyagi, Jagatnarain Lal and Shibbanlal Saksena. They found in the provision the only binding between the Centre and the provinces and ridiculed the suggestion that it was similar to Section 93 in the previous constitution.

Delhi's Future

Earlier, the future of Delhi provided a number of members an excellent opportunity to show their constructive talents in finding acceptable solutions.

The debate, however, was not without sentimental vehemence which was introduced to begin with by Pandit Thakurdas Bhargava, the fast-speaking lawyer from Haryana, the land of bulls and cows. He demanded the merger of Delhi with East Punjab and at the same time extra representation in the Central Legislature for Centrally-administered areas.

Strangely enough he found his most enthusiastic supporters in two members from the U.P. who, ignoring the claims of their own province, advocated Delhi's incorporation in East Punjab. Mr Mahavir Tyagi did not want any "islands of slavery" in the country and was thus against Centrally-administered areas being retained as units.

Mr Mohan Lal Gautam wanted Delhi to be handed over to East Punjab because the partitioned province was without a capital after the loss of Lahore.

Separate Province

Mr B. Das tackled the problem from an all-India angle without any sentimental bias. Delhi had neither a right to separate existence with huge special grants from the Centre nor should it go to East Punjab. Why should Punjabis be given something for nothing? Why should they take Delhi just because they had "invaded" the town. The culture of Delhi was akin to that of the U.P. and it should rightly be made a part of that province.

Mr Naziruddin Ahmed came forward with an axe to carve the little province into bits. He allocated the villages beyond the Jumna to the U.P. and those on this side to East Punjab. For the two cities of Old and New Delhi he demanded the status in the Union City.

Though not a representative of Delhi, the newly-elected Maulana Hifzur Rehman in his maiden speech denied the right of any other province to Delhi, which had always been an entity by itself.

Oratory, however, did not avail. Having had their say, the protagonists of different views settled down in their seats to say "aye" when the Drafting Committee's proposal was put to vote. Delhi's future will be in the hands of Parliament.

Scheduled Caste M.C.A.s Meet

Eighteen members of the Constituent Assembly representing the Scheduled Castes and the Scheduled Caste tribes discussed at a meeting in Delhi yesterday the future place of the Scheduled Castes in the Indian constitution.

The meeting, which was presided over by Mr Manuswami Pillai, is said to have dealt with questions relating to the recruitment of Scheduled Caste members to the Indian Administrative and Police Services, their retrenchment, and the amount spent by the Central and provincial Governments for the uplift of Harijans.

A committee of seven members was appointed to draft resolutions on these subjects to be moved at the next meeting of the members. The resolutions would be sent to the Congress High Command, Pandit Nehru and Sardar Patel.

The members who attended the meeting included: Mr S. Nagappa (Madras), Mr Jai Pal Singh (Bihar), Mrs Dakshayani (Madras), Prof. Yeshwant Rai (East Punjab) and Mr B. M. Nalwade (Bombay).—P.T.I.

HINDU, THURSDAY, AUGUST 4, 1949.

ADMINISTRATION OF PROVINCES

PROCLAMATION OF EMERGENCY

POWERS OF UNION PRESIDENT

CONSTITUENT ASSEMBLY DEBATES NEW CLAUSES

(FROM OUR CORRESPONDENT.)

NEW DELHI, Aug. 3.

The Constituent Assembly to-day considered at length two new Articles introduced by the Drafting Committee defining the emergency powers to be exercised by the President in the event of a breakdown of constitutional machinery in any State of the Union. Under these Articles, the President is vested with authority to issue a proclamation of emergency either on report from the Governor or the Ruler of a State or on his own initiative. The proclamation will be valid for a period of two months unless its continuation was approved by Parliament.

An Article in the original Draft Constitution which vested in the Governor or a Ruler of a State, the authority to proclaim an emergency has been dropped altogether. A new Article making it the duty of the Union to protect every State against external aggression and internal disturbance has been placed before this House for consideration.

The debate which lasted for three days to-day and will be resumed to-morrow revealed a considerable volume of opposition to the new provisions.

Pandit Kunzru, Dr. P. S. Deshmukh, Mr. H. V. Kamath and Mr. Naziruddin Ahmed objected to the new Articles on several grounds. Pandit Kunzru argued that the provision vesting authority in the President to declare an emergency adopted by the House yesterday was comprehensive enough to enable the President to intervene effectively in the administration of a State which adopted a recalcitrant or rebellious attitude. There was, therefore, no need for these Articles to be brought before the House this morning. Dr. Deshmukh felt that the Articles were neither in conformity with federalism nor administratively beneficial as they overburdened Parliament with responsibility which should be borne by others.

Mr. Ayyar, Mr. Krishnaswami Aiyar and Mr. K. Santanam said that the powers proposed to be conferred on the President by the Articles under consideration would be used only when there was a breakdown of the Constitution and there was, therefore, no justification for anyone to be unduly alarmed at the incorporation of the Articles in the Constitution. Mr. Zaidi, in an interesting speech, wanted freedom from too much democracy and localism. Looking at the historical trend in India, he said, the danger was not that the Centre would interfere too much or too often, but that the units would resent intervention and the tendency to break away would manifest its head. Even the finest constitution in the world would be useless if the people did not cultivate a democratic spirit.

GUARANTEE OF PROTECTION TO STATES

At the outset, the House adopted without discussion Article 276, which explained in detail the effect of a proclamation of emergency by the President. The proclamation of emergency was in operation, the executive power of the Union would extend to the giving of directions to any State as to the manner in which the executive power was to be exercised. The power of Parliament to make laws with respect to any matter would also include power to make laws conferring powers and imposing duties upon the Government of India or officers and authorities of the Government of India in respect of that matter.

Dr. Ambedkar then moved three new Articles and said that they related to cognate matters. He also moved an amendment for the deletion of Article 188.

One of the three new Articles—Article 277-A—stated that it should be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State was carried on in accordance with the provisions of the Constitution.

The second Article which replaced Article 278 of the Draft Constitution provided provisions for dealing with failure of constitutional machinery in States. It provided for the President to issue a proclamation on receipt of a report from the Governor or Ruler of a State or otherwise if he was satisfied that the Government of the State could not be carried on in accordance with the provisions of the Constitution. By that proclamation, he could also make provision for suspension of the Government of the State, including the powers of the Governor and the Legislature and declare that the powers of the State Legislature be exercisable by or under the authority of Parliament. He could also make provisions for the assumption of any provisions of this Constitution relating to any body or authority in the State. He could not, however, assume to himself any of the powers vested in a High Court. The President might also vary or vary the proclamation by a subsequent proclamation. The proclamation must be laid before the Houses of Parliament and it would cease to operate at the expiration of two months, unless it was approved by Parliament in the meantime. The proclamation so approved would cease to operate on the expiration of a period of six months unless Parliament approved it for a further period of six months. In no case, the proclamation could remain in force for more than three years.

The next Article stated how the legislative powers in a State would be exercised when its Constitution was suspended. It stated that when a proclamation was issued in a State declaring that it was to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf, the President might authorise, when the House of the People was not in session, expenditure from the Consolidated Fund of the State, pending sanction of such expenditure by Parliament. The President might promulgate Ordinances under Article 102 for the State also, except when both Houses of Parliament were in session.

REASONS FOR CHANGE

Giving an outline of the pattern of the things which had been provided under the three Articles, Dr. Ambedkar reminded the House that the general principle that some machinery against a breakdown of the Constitution should be provided for had already been accepted. The original Article provided that the Governor of a State should have the power to take over the administration of the State by proclamation for a fortnight and then communicate to the President of the Union that the constitutional machinery had failed and that he had issued a proclamation taking over the administration to himself. On the report made by the Governor, the President could act under Article 278.

If, was new felt, Dr. Ambedkar said, that no useful purpose would be served, if there was a real breakdown in which the President was required to act, by allowing the Governor, in the first instance, to have the power to suspend the constitution merely for a fortnight. If the President was ultimately to take the responsibility of entering into the provincial field in order to suspend the Constitution, it was much better that the President should come into the field right at the very beginning. It was, therefore, obvious that Article 188 which gave the power to the Governor to issue a proclamation was not required at all.

Dr. Ambedkar, explaining the need for the introduction of a new Article 277-A, which had provided for the duty of the Union to protect the States against external aggression and internal disturbance, said that it was not merely a pious decla-

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ADMINISTRATION OF PROVINCES

(Continued from page 4)

ration. The Drafting Committee felt the need for such an Article, notwithstanding many provisions contained in the Constitution whereby the Centre had been given powers to override the provinces. The Constitution being a federal one, the provinces were as sovereign in the field which was left to them as the Centre in the field which was assigned to it. The provinces had a plenary authority to make any law for the peace, order, and good government of that province. In those circumstances, the intervention by the Centre or any other authority might be deemed to be an "invasion of the sovereign authority of the province. If the Centre was to protect every unit and also to maintain the Constitution. He pointed out that similar provisions existed in the American and Australian Constitutions. But the Drafting Committee added the maintenance of the Constitution in the provinces as an additional obligation on the part of the Centre.

REPORT TO PRESIDENT

Dealing with Articles 278 and 278-A—the two other articles in the series—Dr. Ambedkar said it had only split up the original Article with certain changes.

The first change was that the President should act on a report from the Governor or otherwise. The original article provided that the President should act on a report made by the Governor. The words "or otherwise" was not there. It was felt that, in view of the preceding Article which imposed a duty and obligation on the Centre, it would not be proper to restrict and confine the action of the President to the report made by the Governor of the Province. It might be that the Governor might not make a report. But the President might act on the basis of his knowledge of facts that his intervention was imminent and necessary in fulfilment of his duty. It was, therefore, necessary that the word "otherwise" be introduced.

The second change was to the effect that it was now provided that the authority and powers of the legislature might be exercisable by anybody to whom Parliament might delegate the powers. The original Article provided that authority and powers of the legislature of a State was exercisable only by Parliament. The change had been effected, he explained, because Parliament might have so much of work that it might not be able to deal with legislation for a province whose legislature had been suspended.

Another important change, Dr. Ambedkar said, was that the proclamation should continue to be in operation only for two months, while the original Article had provided for a period of six months. If after the two months the proclamation was to be continued, it had to be ratified by Parliament by a resolution. The proclamation would then be in operation for six months and further continuance of it for periods of six months should be sanctioned by Parliament. In the original Article, it was provided that, once Parliament had ratified a proclamation, it would go automatically for a period of twelve months. Under the new Article, an outside limit of three years had also been prescribed. After that period, neither Parliament nor the President had the power to continue a proclamation.

Referring to Article 278-A, Dr. Ambedkar pointed out that, under the Article, Parliament might delegate powers to make laws for the State to the President or any other authority. It also provided for the sanctioning of the budget. In the original draft, this provision had been made for the separation and sanctioning of the budget of the Province whose legislature had been suspended. Under the new Article, it had been provided that the President might authorise, when the House of the People was not in session, expenditure from the consolidated funds of the State, pending sanction of the expenditure by Parliament. Finally, the President had been given the right to exercise his power by Ordinances under Article 102 with regard to running the administration of the provinces which had been taken over if and when both Houses of Parliament were not in session. That power was considered necessary for the proper conduct of the administration in the province.

MR. H. V. KAMATH'S CRITICISM

Mr. H. V. Kamath opposed the new Article 277-A and said it was an attempt to whittle down Provincial Autonomy. While "public order" was included in the Provincial List, the new Article gave powers to the Centre to protect a State against "internal disturbances". In the new clause, he saw an attempt, through the backdoor, to confer authority on the Union Government to intervene on the slightest pretext of internal disturbances. He, therefore, moved an amendment to replace the words "internal disturbances" by the words "internal insurrection or chaos".

Mr. Kamath also opposed Article 278 (breakdown provisions). In this, he saw a "subterfuge" to evade and set at nought certain provisions which have already been approved".

Originally, he said, it was intended that the Governors of States, who were the nominees of the President, should make a report to the President, who would then take action under this emergency clause. The new provision enabled the President to act on his own.

This indicated lack of confidence in the President's own nominees. If that was so, Mr. Kamath said, "let us wind up the Government and go home". Was it the intention that the President should intervene solely on the strength of his own judgment and that of his Ministers at the Centre? If that was so, it would be a "foul transaction". It would be a constitutional crime to empower the President to proclaim a state of emergency, not merely on the advice of the Governors, "but otherwise".

Mr. Shibbanlal Saxena (U.P.), generally agreed with the comments expressed by Mr. Kamath and wanted an amendment to Article 278. The effect of the amendment was that the President might, if he so thought fit, order at any time during this period a dissolution of the State Legislature followed by fresh general elections, and the proclamation shall cease to have effect from the date on which the newly-elected legislature met in session. Mr. Saxena said that the Article, as it stood, involved great subservience on the part of the provinces to the Centre. There was not much difference between Section 93 of the old Government of India Act and the present clause.

Col. D. H. Chaturbhuj Sharma (Bhopal), opposing the amendments, said it would be dangerous to be too democratic. The House should be guided by a sense of realism. The danger was not in interference by the Centre, but that the units might resent the guidance of the Centre. There must be some remedy against continued maladministration in a unit. In agreeing to the clause, they should take into account certain historical tendencies which were in evidence now, as also the present conditions in the country.

"NO CAUSE FOR APPREHENSION"

Mr. Panjab Rao Deshmukh (C.P.) agreed with Mr. Kamath on the question of the President taking action against a State, but did not agree that Article 277-A should be amended. After all, besides the President, Parliament had a responsibility in the matter. They had gone through Section 93 in the Government of India Act for many years and had survived it during the war years. There need be no apprehension that there would be prejudicial to the normal working of the Constitution.

Mr. Raj Bahadur (United State of Matsya), said that the purpose of the amendments moved by Dr. Ambedkar was to protect and defend democracy, and not to subvert it as Mr. Kamath had alleged. Mr. Kamath had invoked God's mercy to grant members of the House the wisdom to see the folly and stupidity of the provisions placed before them. "May God also grant us commonsense and balance", Mr. Raj Bahadur added. "Let us not indulge in pious platitudes or flimsy fulminations or criticise merely for the sake of criticising".

Mr. Allagi Krishnaswami Aiyar, member of the Drafting Committee, defending the Article moved by Dr. Ambedkar said that under these provisions, if the Constitution of a State was worked in a proper manner, that is, if Responsible Government, as contemplated by the Constitution, was functioning properly, the Union would not and could not interfere. Far from being an impediment to Provincial Autonomy, they were a bulwark in favour of Provincial and State Autonomy because the primary obligation was cast upon the Union to see that the Constitution was maintained. Such a provision was by no means a novel one. Even in a Federal Constitution like that of the U.S.A., where State sovereignty was recognised more than in any other Government to see that the State was protected both against domestic violence and external aggression.

He reiterated that "President" meant the Central Cabinet responsible to the whole Parliament, in which were represented the representatives of the Union and the component parts.

He had no doubt that not merely the provincial conscience of the representatives of the particular province concerned, but also the conscience of the representatives of all other units would be quickened and they would see to it that the provisions in these Articles were properly worked.

Dealing with a fundamental objection that the breakdown provision now proposed was its roots in the old Section 93, there was no need for taking exception to the main principle underlying it. He would point out that in some States which would form units of the Federation, even suffrage was not adult. Now, they would enjoy Responsible Government. In the interests of a peaceful and healthy functioning of Responsible Government itself, it was necessary that there should be some check from the Centre so that people might realise their responsibility and work Responsible Government properly. Under these circumstances, there was absolutely no reason why any exception should be taken to the principle underlying the present Article.

NEED FOR PROPER CONVENTIONS

Mr. B. M. Gupte (Bombay) said: "Circumstances in this country are such that we cannot do without an Article of this kind". It only hope that it will remain a dead letter and that the country will arise fit to use".

Mr. K. Santhanam, Minister of State for Transport, pointed out that, unlike the old Section 93 which vested discretionary powers in the Governor to take over the Government of a Province from Responsible Government to the Governor-in-Council executive and the Central Legislature, which was unpopular and as democratic as the State Cabinets and Legislatures. Proper conventions would, however, have to be established for the exercise of the new powers.

Pandit Kunzru opposed the new Articles amending Article 278, but he was glad that Article 188 relating to the Governor's power to suspend the Constitution had been deleted. He said that it was inconsistent with the establishment of Responsible Government in the Provinces and the new position of the Governor. Maintaining that it was needless to have Articles 277-A and 278-A because the Central Government had adequate power of intervention under Article 275 and 276 by proclaiming a state of emergency, Pandit Kunzru pointed out that the effect of the latter two Articles was to enable the Central Government to intervene, when owing to internal or external causes, the peace and tranquillity of India or any part of it was disturbed.

"It is obvious," remarked Pandit Kunzru, "that the framers of the Constitution are thinking not of peace and tranquillity of the country or of maintenance of law and order, but good government of the Province. The Centre will interfere not merely to safeguard the province against external aggression and internal disturbance, but also to ensure good government within their limits. The Central Government will, in other words, have the power to intervene to prevent the electors misgoverning themselves." He said that if Responsible Government was to be created, the electors must be made to feel that the power to apply the proper remedy, if any mismanagement occurred, rested with them. It depended upon them to choose their representatives who would be capable of working in accordance with their best interest.

If the Central Government or Parliament were given power to interfere, there was a danger that whenever there was dissatisfaction in a Province, appeals would be made to the Central Government to come to their rescue. The provincial electors would throw their responsibility on the shoulders of the Central Government. It was not right to encourage this tendency. Responsible Government was the most difficult form of Government and it required patience and courage to take risks. If they had neither of these virtues, the constitution would virtually be a stillborn one. Articles 275 and 276 gave the Central Executive all the powers that all the powers that could reasonably be conferred on them in order to see that law and order did not break down in the country or that misgovernment in any part of India was prevented to the extent as to jeopardise the security of the State. It was not necessary for any further.

Objecting to the principle underlying Section 93 of the Government of India Act being sought to be reintroduced, Pandit Kunzru said that Section 93 had a political object. Its object was to see that the constitution was not used in such a way as to prevent the Provincial Government to part with power to the people of India. No such antagonism between the people and the Government of India could exist in the future. The Centre would have adequate power to deal with any organisation of recalcitrant and rebellious attitude on the part of a Province. Considered purely from the political angle, it was desirable that the provincial electors realised that they alone were responsible for the good government of the province and rested with them to decide how it should be carried out.

AMENDMENT OF CONSTITUTION

Pandit Kunzru suggested that the Constitution should be allowed to be amended in the same way as ordinary law at least for five years. He said that the Prime Minister had expressed similar views. The country would have sufficient time to see how the Provinces developed and their Governments carried. If experience had shown that it was necessary for the Central Government to assume responsibility for the good of the people of the Province but for the good government of it, then the Constitution could be amended suitably. At present, it was he did not favour inclusion of these Articles in the Constitution and was, therefore, totally opposed to the motion of Dr. Ambedkar.

Mr. Krishnaswami Bharathi gave support to Articles but expressed surprise at the deletion of Article 188. He said that Article 188 was accepted after a two-day debate. Only at a time of grave emergency was the Governor invested with some powers and he must communicate forthwith to the President. The President would, therefore, be seized of the subject and could act immediately. Article 188 was incorporated only to prevent the possibility of any constitutional breakdown of communication and to meet the contingency of immediate action by the man on the spot should the power to deal with such a situation so that it might not deteriorate.

Mr. Naziruddin Ahmed (West Bengal) said that the new changes were being made in the draft constitution showed that the Drafting Committee had actually been drifting and committee felt that unless the States were given sufficient power, they would lose interest in their affairs and would become irresponsible.

Mr. Naziruddin maintained that Article 188 which was sought to be deleted should not be abolished altogether. If the Governor was given power, he would consult his Ministers and would not incur any responsibility and that would produce the remedy for meeting all situations. Mr. Naziruddin felt that the giving of exclusive power to the President to promulgate a state of emergency and the encroachments made by the Centre on provincial subjects indicated that they were unconsciously drifting towards a dictatorship. He said he was in favour of giving the President overriding power, but not exclusive power. He was afraid that the proposed emergency Articles would create bitterness which would result in the Centre losing its popularity in the Provinces.

Mr. Naziruddin had not concluded when the House adjourned till to-morrow.—PTI

THE FREE PRESS JOURNAL

BOMBAY, THURSDAY, AUGUST 4, 1949

SAFEGUARDING DEMOCRACY

Fear of the Central Government becoming so powerful as to reduce provincial autonomy to a shadow has been a marked feature of discussions in the Constituent Assembly.

This fear was once again displayed to the full on Tuesday when the emergency powers of the President of the Indian Republic came up for discussion.

The clause relating to this says that in case of war, external aggression or internal disturbance, the President may declare a state of emergency.

Such a declaration will remain in force for two months.

Within this period it will have to be laid before both Chambers of the Legislature.

In case the Legislature stands dissolved when emergency is declared, it will remain in force for thirty days after Parliament is reconstituted.

At first sight there seems to be nothing wrong with this provision.

An emergency ceases to be one if it can be foreseen and measures taken to meet it.

Since it is assumed to be unforeseen, extraordinary powers are necessary to counter it.

But the enthusiasts for perfect democracy saw all sorts of dangers in arming the President with these powers.

Their named and unnamed fears were legion.

One of them quoted the example of Hitler's Germany.

Hitler, we are told, established his despotism because the Weimar Constitution of Germany contained clauses by which it could be suspended.

Another of our constitution makers feared that if the Central Government were to be armed with such powers, the autonomy of the provinces would practically cease to exist.

These critics seem to desire our future Government to approximate to something like the perfect democracy that was supposed to exist in the City States of Ancient Greece.

In them the entire body of citizens constituted the State and every decision, important and unimportant, was taken only after a discussion in which every one could have his say.

Such a Government is scarcely suited to a nation of 350 millions.

For it to be successful, citizens must be supermen.

"If there were a nation of Gods," said Rousseau, "they would be governed democratically, but so perfect a Government is not suitable to men."

We have to achieve something like a balance between people's rights and the powers of the executive, of course, always keeping in mind the fact that these same powers are derived from the people alone.

If individual, communal and provincial rights and privileges are considered more important, there is no doubt that sooner rather than later India as a united nation will cease to exist.

Fissiparous tendencies are so dangerous already that we cannot afford to keep the centre weak.

The fear that India will produce a Hitler who will suspend the constitution and assume autocratic powers for himself is rather far fetched.

What was possible in a comparatively small country like Germany is not likely to happen over the vast extent of India.

If any future President of India were foolish enough to attempt such a mad course, that alone would be the signal for the break up of the country.

The clause put before the Constituent Assembly assumes that the President will use his extraordinary powers only when there is a real emergency.

It will be rare indeed for a President to declare emergencies for a pastime as is feared by critics in the Assembly.

Some of them wanted it to be put down in black and white that the President would act only in consultation with his Council of Ministers.

Is it possible to imagine him acting otherwise?

It is curious that no one in the Constituent Assembly thought of invoking the analogy of the President of the United States.

The American President not only enjoys more powers than any King, he is not only the Chief Magistrate of his country, he is also the supreme head of the Armed Forces in war-time.

We should like to hear what the members of the Constituent Assembly would say if the President of India were to be put in a similar position.

Almost certainly they will insist that the President has too much power.

They will be afraid that he will declare a war and lead his army and navy on a campaign of conquest in the good old style.

The thoroughness with which some of our constitution makers discuss every clause of the constitution, and each sentence of every clause, is admirable.

But sometimes their thoroughness overreaches itself and leads them to ridiculous conclusions and meaningless insistence on paper safeguards.

National Herald

EMERGENCY POWERS

Part XI of the Draft Constitution of India relating to emergency provisions has given rise to serious misgivings and it is unfortunate that the Constituent Assembly has done nothing to allay them. The discussion on article 275, like the discussion on other important articles, was meagre and not well informed. Nobody denies the need for emergency provisions but the question is at what cost to liberty they may be allowed to be exercised. Article 275 specifies the emergency powers of the president or the republic and the changes made in the draft were explained by Dr Ambedkar. After the changes, it is enough if the president is satisfied that a grave emergency exists whereby not only the security of India but that of any part of India is threatened. The danger of suppressing liberty in most parts of the country which is so vast when only the security of a particular part of the country is threatened does not seem to have been sufficiently realised. Whereas in the original draft the threat was to come from war or domestic violence, the changes provide for war or external aggression or internal disturbance, widening the scope of domestic violence and enlarging the area of emergency. If "domestic violence" was vague enough, "internal disturbance" is as difficult to define. The other changes relate to the period of proclamation, which after the changes shall cease to operate at the expiration of two months and not six months as provided in the draft. The reduction of the period is, of course, an improvement and even the Drafting Committee must have realised now that in providing for six months originally it far exceeded all limits of reason. The conditions of proclamation of emergency, however, remain with its scope enlarged. A proclamation can be revoked only by a subsequent proclamation. It shall be laid before each house of the parliament but need not be approved by either house. It shall cease to operate only at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both houses of the parliament. A proclamation may be made before the actual occurrence of war or external aggression or internal disturbance if the president is satisfied that there is imminent danger thereof.

To realise the consequences of such a proclamation we have to see what it means. When emergency is proclaimed, then, notwithstanding anything contained in the constitution, the executive power of the union shall extend to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised; the power of the parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties or authorising of conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter. While a proclamation is in operation, under article 279 nothing in article 13 relating to freedom of speech and other freedoms shall restrict the power of the state as defined in that part to make any law or to take any executive action which the state would otherwise be competent to make or to take. Where a proclamation is in operation, the president may under article 280 by order declare that the rights guaranteed by article 25 relating to constitutional remedies shall remain suspended for a certain period. Articles 279 and 280 have yet to be discussed by the Constituent Assembly and the provisions relating to the president taking over the administration of a state by proclamation, on a report of failure of the constitutional machinery in the state by the governor, have to be distinguished from the national emergency we are discussing. It will be seen that in the main proclamation of emergency will mean extension of the executive power of the union over the constituent states, enlargement of the power of the parliament, suspension of certain freedoms and constitutional remedies.

There can be two views on emergency powers. They may be considered as a necessary condition for preserving the constitution itself from attack, apart from the safeguarding of the nation against war or external aggression. It is generally preservation of the rule of the majority against the attack of disorderly minority elements which threaten totalitarianism. Fear has been expressed that, unless it is specifically provided that the president should not issue a proclamation of emergency except on the advice of his council of ministers, he might act on his own but it shows a complete misunderstanding of the entire constitution. The president cannot act without the advice of the council of ministers because a proclamation operates through the executive power which means the power of the central cabinet. If that cabinet does not represent a majority, it will itself cease to exist. While the president is liable to impeachment in case of mischievous exercise of power, the cabinet may be overthrown if a proclamation of emergency is not supported by the majority in the legislature. We have no doubt that the emergency provisions are meant to preserve constitutionalism and not to abrogate it. But two sets of serious objections can be raised against the present emergency provisions, that they have unnecessarily extended the scope of emergency which will entail much suppression of liberty and that, contrary to similar provisions in other constitutions, for a period of two months at least they provide for no legislative check or accord and there is absolutely no judicial check.

The first set of objections were raised by many of the members of the Constituent Assembly who took part in the debate on article 275 and the Drafting Committee should have agreed to define "internal disturbance" or to eliminate proclamation of emergency before the actual occurrence of such "internal disturbance". It was surprising that some members even demanded further extension of the scope of emergency. The second set of objections at least should have been considered without prejudice. Mr. T. T. Krishnamachari's arguments in defence of the Drafting Committee's attitude were astounding. He wanted to provide even against disturbances due to economic causes, strengthening the fear expressed by Mr. Kamath that, in the effort to erect defences for the constitution, we might be paving the way for the rise of dictatorship in the name of the constitution, like the rise of Hitler under the shadow of the Weimar constitution. Mr. Krishnamachari was extremely careless in citing in support the British Emergency Powers Act of 1920, which was intended among other things to meet grave economic consequences and was used only at the time of the general strike of 1926 and recently in the dockers' strike. If comparison with emergency legislation in the USA and Britain is desired, it will be found that there is no case for the emergency provisions as provided in part XI of the draft constitution. In invoking emergency in Britain, the Government is under the obligation to obtain the approval of Parliament within the shortest possible time. If Parliament is in session consideration of the proclamation starts immediately; if it is not in session but has been adjourned or prorogued, it must be summoned within five days for consideration of the proclamation. When the regulations are laid before Parliament, they must be ratified within seven days by both the houses of Parliament; otherwise they lapse. They remain in force for a period of one month only, even if approved, though they can be renewed afterwards for similar periods. In India the conditions will be different and under article 280 the president can suspend the remedies for enforcement of the fundamental rights, if he so wishes, for months after a proclamation has ceased to operate. In the USA, even under the Taft-Hartley Act, the President whenever he feels that a critical situation has arisen appoints a fact-finding committee of experts to advise him whether a national emergency has arisen. If he feels that exceptional measures are required, he sues in the courts for injunction proceedings and the matter thereafter rests with the courts. Even when the courts allow an injunction, it can remain in operation only for eighty days. The contention that in India there will be neither legislative nor judicial check for two months is correct. The evil is reduced only by the diminution of the period of proclamation of emergency from six months to two months. Mr. Krishnamachari contended that the background legislative authority would remain supreme. But the executive authority also would remain supreme for at least two months. We may hope that the legislature will be a worthy sovereign legislature. The executive, of course, will be based on the majority. But the legislature may be docile and the majority may be a sham majority. Whatever may be their contribution to stability, the emergency provisions should be viewed on the whole with some alarm.

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The Tribune

Ambala Cantt., August 4, 1949

SCRAP SECOND CHAMBERS.

The trend of debate in the Constituent Assembly on the Articles relating to powers of provincial Upper Houses showed without any shadow of doubt that a large majority of the members were definitely opposed to bicameral legislatures in the provinces. In spite of the fact that the House had already adopted Article 148A, under which a Second Chamber will continue to function in a province where it is already in existence, till it is abolished by the future Parliament of India on the recommendation of the Lower House of the province concerned, member after member spoke on the undesirability of having two houses of legislature. The Drafting Committee itself does not seem to be very enthusiastic about Second Chambers. By introducing the new Article 148A in the Constitution, it has purposely simplified the procedure for the abolition of a Second Chamber in a province where it already exists. As regards its powers vis-a-vis the Lower House the Committee recommended the substitution of the original article 172 which provided for a joint sitting of both Houses when the Upper House differed from the Lower House, by a new one dropping altogether the exigency of a joint sitting of the two Houses. The substituted article, which was moved by Dr. Ambedkar and adopted by the Constituent Assembly with a minor amendment, provides that If a bill passed by the Legislative Assembly of a State (unit) is transmitted to the Legislative Council and the bill is rejected by the Council; or more than three months elapse from the day on which the bill is laid before the Council without the bill being passed by it or the bill is passed by the Council with amendments to which the Assembly does not agree, the Lower House might again pass the bill with or without the amendments suggested by the Council and then re-transmit the bill so passed to the Council, and if the bill so transmitted for the second time is rejected by the Council or is not passed within one month from the date on which the bill is laid before the Council, or the bill is passed with amendments to which the Lower House does not agree, then the bill should be deemed to have been passed by both Houses of Legislature in the form in which it was passed by the Lower House. It means that the power of an Upper House to delay legislation passed by a Lower House has been limited to three months in the first instance, and to one month in the second. This provision is certainly better than the original one.

The members, who spoke on the article, expressed their extreme anxiety that the Upper House should, under no circumstances, be given powers to thwart the will of the Lower Chamber. Their anxiety is shared by the people who are of the definite view that the decision of a popular house representing the will of the people should not be upset or modified or its execution delayed by the Upper House. A Second Chamber is expected to act as a stabilising or delaying factor in the constitution. The general tendency is to curb its powers with the ultimate object of reducing it to a position of nullity. This is what is happening in other countries. Our case is different. We are having a new constitution for free India. Will it not be pertinent to ask if it is all necessary or desirable to set up Second Chambers even in provinces where they are in existence under the 1935 Act? Will the money and energy spent on setting up Second Chambers be commensurate with their ultimate utility in the constitution? These questions must be considered dispassionately at a time when we are laying the foundations of our new constitution. We should try to profit by the experience of other democratic countries and do away with what has been found by them to be useless or redundant. The Indian provinces cannot accord the luxury of Second Chambers. This is all the more so, when it has been thought necessary to restrict and curb their powers as far as possible. Certainly we do not want them for show. The best and the wisest thing to do even at this stage is to scrap them altogether. No one will regret if, in view of the overwhelming opposition to Upper Houses, the Constituent Assembly rescinds its previous decision. It is competent to do so. To satisfy the conservative group the Assembly may authorise the future Parliament of India to legislate for the creation of a Second Chamber in any particular province if the Lower House of that province specifically asks for it by a two-thirds majority. Or in the alternative it can give powers to a provincial Lower House to set up a Second Chamber if it deems it necessary. It should not impose Second Chambers on the people without ascertaining their views.

Amrita Bazar Patrika

4-8-49

EMERGENCY PROVISIONS

ARTICLE 275 OF THE DRAFT Constitution provides that the President of the Union may issue a Proclamation of Emergency if he is "satisfied that a grave emergency exists whereby the security of India is threatened, whether by war or domestic violence." Such a Proclamation "may be made before the actual occurrence of war or of any such violence if the President is satisfied that there is imminent danger thereof." This Article has been adopted by the Constituent Assembly in an amended form. In the first place, the words "domestic violence" have been replaced by the words "external aggression or internal disturbance." There may be a case of "external aggression" which may not be "war" in the technical sense prescribed by International Law. The inclusion of the words "external aggression" is, therefore, appropriate and necessary. Secondly, the Draft Constitution provides that the Proclamation "shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolution of both Houses of Parliament." Dr. Ambedkar's amendment provides that "two months" should be substituted for "six months." This change is intended to give the Union Legislature an earlier opportunity of revising the decision of the Executive.

Under Article 276 "the executive power of the Union shall extend to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised." This means the virtual suspension of Provincial Autonomy—the temporary reduction of a state to the status of a Centrally administered area. Under Article 275 in its amended form this suspension may continue for two months without the approval of Parliament.

The Legislature of the State concerned will have no right to be consulted. In case of "war" or "external aggression" the Union Executive may claim to be the best judge; but in case of "internal disturbance" there is no reason why the local Legislature should be completely excluded from the picture. In a Federal Constitution the rights of the constitutent units are not less sacred than those of the Centre. Why should the rights of the States be taken away without giving them any opportunity even to express their views through their Legislatures?

We may be told that "a grave emergency" may be so "imminent" that the President may have no time to consult the State Legislature concerned. In that case the State Cabinet may be consulted. We do not suggest that the President should be constitutionally bound to accept the advice of the State Cabinet. What we mean is that before issuing a Proclamation of Emergency necessitated by "internal disturbance", the President should consult the Legislature or, if that is not possible, the Cabinet of the State concerned, thus giving the State an opportunity to be heard before its autonomy is sacrificed even for a brief period. In case of "war" or "external aggression", however, a State should be ready to make that sacrifice without being consulted.

It is not a question of sentiment; it is a grave political problem. The President will be the sole judge of the emergency. He may magnify a local riot into an "internal disturbance" justifying a Proclamation of Emergency. He may act on wrong information. He may be an alarmist. He may commit a bonafide error of judgment. He may act even to serve party purposes. Under Articles 42 and 61 of the Draft Constitution the President can act only on the advice of the Union Cabinet. Several members argued that Article 275 should include a clause making it obligatory for the President to consult the Union Cabinet before issuing a Proclamation of Emergency. Mr. V. T. Krishnamachari replied that the Drafting Committee "had provided elsewhere that the President would act only on the advice of the Cabinet, and to expressly provide for such a contingency in this clause would virtually amount to giving the President arbitrary powers in other matters by force of implication". Thus in deciding whether an occasion for issuing a Proclamation of Emergency has arisen the President will not exercise his individual judgment; he will act on the advice of the Ministers representing the party in power in the Centre. It is quite conceivable that this party may be different from the party in power in a particular State. There may be a Congress Ministry in the Centre and a Socialist Ministry, say, in Bombay. It is conceivable, also, that the Central Ministry may be anxious to remove the State Ministry. A riot may break out somewhere in the State, and the Central Ministry may decide to treat it as an "internal disturbance" within the meaning of Article 275. Whatever the President's personal views may be, he will have to issue a Proclamation of Emergency if he is so advised by the Central Ministry. Dr. Deshmukh pointed out that "the President might proclaim an emergency just on the eve of a General Election in a Province, so that the party in opposition to the party in power might be crippled".

These are not imaginary dangers. The Central Government will not be guided for all time by Pandit Nehru and Sardar Patel. Their successors may be autocrats. They may utilise the Constitution for establishing a veiled dictatorship. The provisions which we are now making for a really "grave emergency" may be used by them in day-to-day administration. Charles I of England is said to have "made the medicine of the constitution its daily food". Is there any guarantee that at some future date the leaders of the party in power at the Centre will not follow the same method for the purpose of bringing any recalcitrant

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11-8-49

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State under their own control? We are legislating for the future, and we must not lose sight of any contingencies which seem to take place in the present context.

THE HINDU

THURSDAY, AUGUST 4, 1949.

SECOND CHAMBERS

The precarious functions and the farcically illusory powers which the Constituent Assembly has decided will suffice for the Upper Chambers in the States are in significant contrast with the considerable and in a sense unprecedented powers which it has agreed to confer on the President of the Union to deal with emergencies in any part of the country. Nobody who realises that the position in the country is still far from normal and that it may be many years before we shall have conditions of stable peace and harmony will dispute the need for vesting in the Head of the State emergency powers which would enable the Executive to nip in the bud mischief which the inevitably slower Legislative action might not be able to cope with. But it is worth noting that the kind of emergency contemplated, which includes internal disturbance as well as external aggression, would rarely happen in States where due provision was made for the proper ventilation of all legitimate grievances, for the giving of sufficient opportunity to unpopular opinions to be heard and for effective check to the misplaced zeal or the overweaning pride of power which might prompt a majority in its dealings with minorities. It was pointed out by Dr. Ambedkar that the case of the Upper Houses in the States was rather different from that of the Upper Chamber in the Centre and that the latter had to be given greater powers because the constitution of India was Federal in character. A Federal Constitution has been necessitated for India because of certain special circumstances—such as that conditions between State and State are so different, that there are considerable minorities of various kinds, cultural and religious as well as political, and that there are large sections of backward people whose interests have to be safeguarded and progress speeded up. Now these special conditions are present as well in most of the States that make up the Union. The fact that many of these States incorporate large tracts of country which used to be under the rule of Indian Princes and which had long been accustomed to different modes of government, merely adds to the weight of the argument that the States which would be the units in the new Constitution have as great a range of internal variety and divergence as the Union considered as a whole.

In the circumstances there would seem to be a *prima facie* case for not distinguishing in essentials between the Upper House at the Centre and the Second Chambers in the States. The function and powers of these latter as envisaged in the Draft Constitution were meagre enough; but the Constituent Assembly has reduced them even further. Thus, whereas originally it had been provided that the Upper House could delay for six months a Bill passed by the Lower House, it is now provided that this delay shall not be more than three months and that if the Lower House should refuse to accept any amendments suggested by the Second Chamber and sent it back to the latter, the Bill would become law after a month whatever attitude the Second Chamber might take. Now three months for the serious consideration of a measure like, say, the Zamindari Abolition Bill which the Madras Legislature recently passed, would be ridiculously inadequate. The British House of Lords is looked up as being under indefinite reprieve. But even a Labour Government has qualms about reducing it to a nullity. A topical illustration of this is provided by the Steel Bill which the Lords (where the Tories have a majority) wanted to block pending the general election which should normally take place in another two years. The Government spokesman contended that the Lords was an unrepresentative House and it could not be allowed to delay for two whole years a Bill passed by the Commons on the ground that the opinion of the people on the measure was not clear. But he admitted that there was a convention by which the right of the Lords to delay a Bill if it should come up *in the last year* of the life of a Parliament was accepted by all parties including his own. Though Viscount Addison in making this admission stated, "We have conceded the point owing to political exigencies," the debate has a clear lesson for us. The need for real if limited powers to a Second Chamber to ensure deliberation and reflection has been amply brought out by the spate of ill-digested legislation which practically every Province has in the last two years rushed through from the common if dangerous notion that speed is progress. Even if there was a case for not providing that differences should be resolved by a joint session of the two Houses, the least that could have been done was to retain the six-month limit provided in the Draft Constitution. Nor can the other provision, that Second Chambers could be established or abolished without a change of the Constitution, by the simple vote of a two-third majority in the Lower House of the State concerned, be considered a step in the right direction. The cumulative effect of all the provisions about Second Chambers will be to slight them in the public estimation and rob them of all practical utility. If we remember that adult franchise might result in Lower Houses which will not be conspicuous for learning or talent, the failure to provide what might have been a really effective check on their vagaries can only be regretted.

The Hindustan Times

THURSDAY, AUGUST 4, 1949

EMERGENCY POWERS

During the discussions in the Constituent Assembly on Article 275 dealing with proclamation of emergency by the President, critics took the line that the powers which the President would get under such a proclamation would virtually make of him a dictator, reducing provincial autonomy to a farce. There were a few who challenged the need for such proclamations. None but the purblind or the over-optimistic would contend that the country had settled down to a peaceful process of constitutional development under which there was no likelihood of the sudden emergence of crises. Apart from the possibility of external aggression beyond our control, events during the last two years and some recent incidents only emphasize too well the need for such a provision in the constitution. The possibility of a sudden challenge to constituted Government arising from unsocial and disruptive elements or small minorities determined to impose their will on the whole community by force is one which our constitution-makers must take into account. Not to make provisions of the sort included in Part XI of the Draft Constitution will be to leave the Executive powerless at the very moment when swift action may be necessary. It is neither democracy nor liberalism to expose our newly-won freedom to unexpected perils

Once the need for such provisions is admitted, the next question which arises is whether the actual provisions are such as are liable to be abused by an autocratically-minded President. As Mr T. T. Krishnamachari pointed out in his reply to the debate, the whole scheme of the constitution is based on the conception of a President who would, on all occasions, act on the advice of his ministers. The new sub-section 5(a) of Article 62 specifically provides that the President in the choice of ministers and the exercise of his other functions shall generally be guided by the instructions set out in Schedule III-A. That schedule is yet to be considered by the Constituent Assembly. At the President's suggestion, the question of having a specific provision in the Constitution itself making it obligatory on the President to act always on the advice of his ministers is still being considered by the Drafting Committee. But apart from any such provision, no elected President is likely to act in open defiance of the law and the constitution, especially when the Constitution provides actual machinery for impeaching him for acting in any such manner. Another point which our constitution-makers will do well to remember is that the right to act effectively and quickly is inherent in the discharge of executive responsibility under modern conditions and the risk of providing an Executive which can be called to account later with special powers is less than the risk to which the country will be exposed in the absence of such a provision. Though under the U.S. Constitution, it is Congress and not the Executive which can declare war, President Roosevelt called on all U.S. armed forces to defend themselves vigorously after the attack on Pearl Harbour, even though the actual declaration of war by the U.S.A. was to come later.

Under the article as approved by the Constituent Assembly, moreover, the proclamation will become invalid at the expiration of two months unless, in the meanwhile, it has been approved by resolutions of both Houses of Parliament. If the House of the People has been dissolved, the proclamation will become invalid 30 days after the House assembles, unless approved by both Houses. While it may be arguable whether the period allowed for should be longer, as in the original draft, it does not certainly lie in the mouth of the critics to characterize the provision as derogatory to the supremacy of the will of Parliament. In the last resort, however, what matters is the nature of the powers with which the President and the Central Executive will be armed in the event of proclamation of an emergency. According to the scheme of Part XI of the constitution, which is still under discussion, when a proclamation of emergency has been made, the Union will have the power to give direction to any State as to the manner in which it should exercise its executive power and Parliament can enact laws investing Union officials with executive powers as regards Concurrent subjects as well. It may further involve reordering of the provisions regarding distribution of revenues between the Union and States, suspension of the freedom of speech, association, etc., as enumerated in Article 13 and withdrawal of the right to move the courts in cases of infringement of these rights. To dub the provisions regarding the right to give directions to States as an invasion of provincial autonomy is to disregard the experience of last war, which necessitated assumption of similar powers by the Centre, though the overall control of British authority still existed. As regards the new articles authorizing the President to take over the administration of a State in the event of any special emergency, critics will do well to remember that in the face of unconstitutional challenge to any authority within the Union, the only power in a position to safeguard the States, the Union and the constitution is the Central Executive and there is no escape from it. Lessons drawn from the constitutional conflicts of the last three decades are not applicable at present and will not be applicable in the future, as supreme power now rests in the hands of the representatives of the people and not in any alien body or authority. That is a distinction many are apt to forget because of old habit.

GOVERNANCE OF A STATE IN TURMOIL

LONG-DRAWN DEBATE ON HEAD OF STATE'S EMERGENCY POWERS

DIVERGENT VIEWS AMONG C.A. MEMBERS

The Constituent Assembly yesterday devoted its entire four-hour sitting to an inconclusive debate on Articles referring to the Indian Union President's emergency powers to assume all the functions of the Government of a State in case of a failure of the governmental machinery there.

In that event, the powers of the State Legislature concerned could be exercised by or under the authority of Parliament. ....

The President's emergency powers would cease to operate after two months unless the period is extended by Parliament. Parliament would be able to renew the proclamation of emergency every six months up to a maximum period of three years.

Dr Ambedkar, Chairman of the Drafting Committee, also sought to delete Section 188, under which the Governor was to have been authorized to exercise emergency powers up to a fortnight before communicating to the President.

One important provision in the new Articles is that the President can act not only on receipt of information from the Governor or ruler but even otherwise.

Critics who included Pandit Hirday Nath Kunzru, Mr H. V. Kamath, Prof. Shibbanlal Saksena, Dr Punjabrao Deshmukh and Mr Naziruddin Ahmed, contended that the new provision was inconsistent with provincial autonomy.

Mr H. V. Kamath, who called the Article "a foul transaction," invoked Providence to grant sufficient wisdom" to the members to see the "folly and stupidity of this constitutional crime."

Mr Raj Bahadur, who did not share Mr Kamath's views, added: "May God also grant us commonsense and balance."

Three New Articles

On resumption yesterday the Constituent Assembly took up for consideration a new series of three Articles moved by the Law Minister, Dr Ambedkar. They related to the duty of the Union to protect States against external aggression and internal disturbance, provisions in case of failure of constitutional machinery in States and the power of the President to issue proclamation assuming to himself all functions of the Government of the State and suspension of the provincial constitution and the exercise of legislative powers under the proclamation issued under the previous Article.

These Articles embodied the principles underlying Section 93 of the Government of India Act, though the machinery provided for the operation and the procedure to be adopted after assumption of power of the Government differred materially.

Before the House took up consideration of these Articles, it adopted without discussion Article 276 which detailed the effect of a proclamation of emergency by the President. When a proclamation of emergency was in operation, the executive power of the Union would extend to the giving of directions to any State on the manner in which the executive power was to be exercised. The power of Parliament to make laws with respect to any matter would also include the power to make laws conferring powers and imposing duties upon the Government of India or officers and authorities of the Government of India in respect of that matter.

Dr Ambedkar then moved three new Articles and said that they related to cognate matters. He also moved an amendment for the deletion of Article 188 which contained provisions in cases of grave emergencies. The new Articles referred to the same subject but provisions had been made differently.

Protection Of States

One of the three new Articles—Article 277-A—stated that it should be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State was carried on in accordance with the provisions of the Constitution.

The second Article which replaced Article 278 of the Draft Constitution contained provisions for dealing with failure of constitutional machinery in States. It provided for the President to issue a proclamation on receipt of a report from the Governor or Ruler of a State or otherwise, if he was satisfied that the Government of the State could not be carried on in accordance with the provisions of the Constitution. By that proclamation he could assume to himself all the functions of the Government of the State, including the powers of the Governor and the legislature and declare that the powers of the State legislature would be exercisable by or under the authority of Parliament. He could also make provisions for suspension of any provisions of this Constitution relating to any body or authority in the State. He could not, however, assume to himself any of the powers vested in a High Court.

The President might revoke or vary the proclamation by a subsequent proclamation. The proclamation must be laid before the Houses of Parliament and it would cease to operate at the expiry of two months unless it was approved by Parliament in the meantime. The proclamation so approved would cease to operate on the expiry of a period of six months unless Parliament revived it for further periods of six months. In no case the proclamation could remain in force for more than three years.

Legislative Powers

The next Article stated how the legislative powers in a State would be exercised when its constitution was suspended. It stated that when a proclamation was issued in a State Parliament might delegate the power to make laws for the State to the President or any other authority specified by him in that behalf. The President might authorize, when the House of the People was not in session, expenditure from the consolidated funds of the State pending sanction of such expenditure by Parliament. The President might promulgate ordinances under Article 102 for the State also, except when both the Houses of Parliament were in session.

Giving an outline of the pattern of the things which had been provided under the three Articles, Dr Ambedkar reminded the House that the general principle that some machinery against the breakdown of the Constitution should be provided for had already been accepted. The original Article suggested that the Governor of a State should have the power to take over the administration of the State by proclamation for a fortnight and then communicate to the President of the Union that the constitutional machinery had failed and that he had issued a proclamation taking over the administration to himself. On the report made by the Governor the President would act under Article 278.

Article Modified

It was now felt, Dr Ambedkar said, that no useful purpose would be served, if there was a role of procedure by which the President was required to act, in allowing the Governor, in the first instance, to have the power to suspend the constitution merely for a fortnight. If the President was ultimately to take the responsibility of entering into the provincial field in order to suspend the constitution, it was much better that the President himself should come into the field right at the very beginning. It was, therefore, obvious that Article 188 which gave the power to the Governor to issue a proclamation was not required at all.

Dr Ambedkar, explaining the need for the introduction of a new Article 277-A which had provided for the duty of the Union to protect the States against external aggression and internal disturbance, said that it was not merely a pious declaration. The Drafting Committee felt that need for such an Article.

Notwithstanding many provisions contained in the Constitution by which the Centre had been given powers to override the provinces, the Constitution being a federal one, the provinces were as sovereign in the field which was left to them as the Centre in the field which was assigned to it. The provinces had a plenary authority to make any law for the peace, order and good government of the province. In those circumstances intervention by the Centre or any other authority might be deemed to be an "invasion of the sovereign authority of the province." If the Centre was to interfere in the administration of the provincial affairs, as it was proposed by virtue of Article 277-A it must be under some obligation which the Constitution imposed on the Centre.

No Encroachment

"The invasion must not be an invasion which is wanton, arbitrary and unauthorized by law," the Minister said, adding: "And in order to make quite clear that these Articles should not be deemed as wanton invasion by the Centre upon the authority of the provinces, the Drafting Committee proposed Article 277-A, stating that it should be the duty of the Union to protect every unit and also to maintain the Constitution."

Dr Ambedkar pointed out that similar provisions existed in the American and Australian Constitutions. But the Drafting Committee added the maintenance of the Constitution in the provinces as an additional obligation on the part of the Centre.—

Other Changes

Dealing with Articles 278 and 278-A —the two other Articles in the series— Dr Ambedkar said that the Drafting Committee had only split up the original Article with certain changes.

The first change was that the President should act on a report from the Governor or otherwise. The original Article had provided that the President should act on a report made by the Governor. The word "otherwise" was not there. It was felt that in view of the preceding Article which imposed a duty and obligation on the Centre, it would not be proper to restrict and confine the action of the President to the report made by the Governor of the province. It might be that the Governor might not make a report. But the President might feel on the basis of knowledge of facts that his intervention was imminent and necessary in the fulfilment of his duty. It was, therefore, necessary that the word "otherwise" be introduced.

The second change was to the effect that it was now provided that the authority or powers of the legislature might be exercisable by anybody to whom the Parliament might delegate the powers. The original Article provided that authority and powers of the legislature of a State were exercisable only by Parliament. The change had been effected, he explained, because Parliament might have so much of work that it might not be able to deal with legislation for a province whose legislature had been suspended.

Emergency Term Longer

Another important change, Dr Ambedkar said, was that the proclamation should continue to be in operation only for two months while the original Article had provided for a period of six months. If after the two months the proclamation was to be continued, it had to be ratified by Parliament by a resolution. The proclamation would then be in operation for six months and further continuance of it for periods of six months should be sanctioned by Parliament. In the original Article it was provided that once Parliament had ratified a proclamation it would run automatically for a period of 12 months. Under the new Article an outside limit of three years had also been prescribed. After that period neither Parliament nor the President had the power to continue a proclamation.

Referring to Article 278-A, Dr Ambedkar pointed out that under the Article Parliament might delegate powers to make laws for the State to the President or any other authority. It also provided for the sanctioning of the budget. In the original draft no provision had been made for the preparation and sanctioning of the budget of the province whose legislature had been suspended. Under the present Article it had been provided that the President might authorize, when the House of the People was not in session, expenditure from the consolidated funds of the State, pending sanction of the expenditure by Parliament. Finally the President had been given the right to exercise his power to issue Ordinances under Article 102 with regard to running the administration of the provinces which had been taken over and when both the Houses of Parliament were not in session. That power was considered necessary for the proper conduct of administration in the province.

Mr H. V. Kamath opposed the new article and said it was an attempt to whittle down provincial autonomy. While "public order" was included in the provincial list, the new article gave powers to the Centre to protect a State against "internal disturbances."

In the new clause he saw an attempt through the backdoor to confer authority on the Union Government to intefere on the slightest pretext of internal disturbances. He, therefore, moved an amendment to substitute the words "internal disturbances" with the words "internal insurrection or chaos."

Breakdown Provisions

Mr Kamath also opposed Clause 278 (breakdown provisions). In this he saw a "subterfuge to nullify and set at nought certain provisions which have already been approved." Originally it was intended that the Governors of States, who were the nominees of the President, should make a report to the President, who would then take action under this emergency clause. The new provision enabled the President to act on his own. This indicated lack of confidence in the President's own nominees. If this was so, Mr Kamath said: "Let us wind up the Government and go home." Was it the intention that the President should intervene solely on the strength of his own judgment and that of his Ministers at the Centre? If that was so, it would be a "foul transaction." It would be a constitutional crime to empower the President to proclaim a state of emergency not merely on the advice of the Governors but "otherwise" too.

Prof. Shibbanlal Saksena generally agreed with the viewpoints expressed by Mr Kamath and wanted an amendment to Clause 278. The effec; of the amendment was that the President might. If he so thought fit, order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the proclamation shall cease to have effect from the day on which the newly-elected legislature met in session. Mr Saksena said that the article as it stood imposed great subservience on the part of the provinces to the Centre. There was no difference between Section 93 of the old Government of India Act and the present clause.

Col. D. H. Zaidi (Rampur-Banaras), opposing the amendments, said it would be dangerous to be too democratic. The House should be guided by a sense of realism. The danger was not in interference by the Centre but that the units might resent the guidance of the Centre. There must be some remedy against continued maladministration in a unit. In agreeing to the clause they should take into account certain historical tendencies which were apparent now as also the present conditions in the country.

Parliament's Responsibility

Mr Panjabrao Deshmukh agreed with Mr Kamath on the question of the President taking action against a State but did not agree that Section 277-A should be amended. After all, besides the President, Parliament had a responsibility in the matter. They had gone through Section 93 in the Government of India Act for many and had survived it during the war years. There should be no apprehension that this would be prejudicial to the normal working of the constitution.

Mr Raj Bahadur (Matsya) said that the purpose of the amendments moved by Dr Ambedkar was to protect and defend democracy and not to subvert it as Mr Kamath had alleged. Mr Kamath had invoked God's mercy to grant members of the House the wisdom to see the folly and stupidity of the provisions before them. "May God also grant us common sense and balance." Mr Raj Bahadur added. "Let us not indulge in pious platitudes or flimsy fulminations or criticize merely for the sake of criticizing."

Autonomy Not Reduced

Mr Alladi Krishnaswami Ayyar, member of the Drafting Committee, defending the articles moved by Dr Ambedkar, said that under these provisions, if the constitution of a State was worked in a proper manner, that is, if responsible government as contemplated by the constitution was functioning properly, the Union would not and could not interfere. Far from being an impediment to provincial autonomy, they were a bulwark in favour of provincial and State autonomy, because the primary obligation was cast upon the Union to see that the constitution was maintained. Such a provision was by no means a novel one. Even in a federal constitution like that of the U.S.A. where State sovereignty was recognized more than in any other federation, it was the duty of the Central Government to see that the State was protected both against domestic violence and external aggression.

He reiterated that "president" meant the Central Cabinet responsible to the whole Parliament in which were represented the representatives of the Union and the component parts.

He had no doubt that not merely the provincial conscience of the representatives of the particular province concerned but also the conscience of the representatives of all other units would be quickened and they would see to it that the provisions in these articles were properly worked.

Except for the sentimental objection that the breakdown provision, now proposed, had its roots in the old Section 93, there was no need for taking exception to the main principle underlying it. He would point out that in some of the States which would form units of the Federation, even suffrage was unknown. Now they would enjoy responsible government. In the interests of a sound and healthy functioning of responsible government itself, it was necessary that there should be some check from the Centre so that the people might realize their responsibility and work responsible government properly. Under these circumstances, there was absolutely no reason why any exception should be taken to the principle underlying the present section.

Mr B. M. Gupte (Bombay) said: "Circumstances in the country are such that we cannot do without an article like this. I only hope that it will remain a dead letter and no occasion will arise for its use."

Need For Conventions

Mr K. Santhanam, pointed out that unlike the old Section 93 which vested discretionary powers in the governor to take over the government of a province in an emergency, the powers now proposed could be exercised only by the Central executive and the Central legislature, which was as popular and as democratic as the State Cabinets and legislatures. Proper conventions would, however, have to be established for the exercise of these powers.

Pandit Kunzru opposed the new Articles amending Article 278, but he was glad that Article 188 relating to the Governor's power to suspend the constitution had been deleted. He said that it was inconsistent with the establishment of responsible government in the provinces and the new position of the Governor. Maintaining that it was needless to have Articles 277-A and 278-A because the Central Government had adequate power of intervention by Articles 275 and 276 by proclaiming a state of emergency, Pandit Kunzru pointed out that the effect of the latter two Articles was to enable the Central Government to intervene, when, owing to internal or external causes, the peace and tranquility of India or any part was threatened.

"It is obvious," he remarked, "the framers of the constitution are thinking not of peace and tranquility of the country or of maintenance of law and order but 'good government of the province.' The Centre will interfere not merely to protect the province against external aggression and internal disturbance but also to ensure good government within their limits. The Central Government will in other words have the power to interfere to protect the electors against themselves."

He said that if responsible government was to be created, the electors must be made to feel that the power to apply proper remedy if any mismanagement occurred rested with them. It depended upon them to choose representatives capable of working in their best interests.

If the Central Government or Parliament were given power to interfere there was a danger that, whenever there was dissatisfaction in a province, appeals would be made to the Central Government to come to their rescue. The provincial electors would throw their responsibility on the shoulders of the Central Government. It was not right to encourage this tendency. Responsible government was the most difficult form of government and it required patience and courage to take risks. If they had neither of these virtues, the Constitution would virtually be a still-born one.

Articles 275 and 276 gave the Central Executive and Parliament all the powers that could reasonably be conferred on them in order to see that law and order did not break down in the country or mis-government in any part of India was pushed to such an extent as to jeopardize the security of the State. It was not necessary to go any further.

Principle Of Section 93

Objecting to the principle underlying Section 93 of the Government of India Act—now not in operation—being sought to be reintroduced, Pandit Kunzru said that Section 93 had a political object. Its object was to see that the Constitution was not used in such a way as to compel the British Government to part with power to the people of India. No such antagonism between the people and the Government of India could exist in future.

The Centre would have adequate power to deal with any manifestation of recalcitrant and rebellious attitude on the part of a province. Considering purely from the political angle, it was desirable that the provincial electors realized that they alone were responsible for the government of their province and it rested with them to decide how it should be carried on.

Pandit Kunzru suggested that the Constitution should be allowed to be amended in the same way as ordinary law, at least for five years. He said that the Prime Minister had expressed similar views. The country then would have sufficient time to see how the provinces developed and their Governments carried. If experience had shown that it was necessary for the Central Government to assume responsibility not merely for the safety of the province but for the good governance of it, then the Constitution could be amended suitably. At the present time he did not favour inclusion of these Articles in the Constitution and was, therefore, totally opposed to the motion of Dr Ambedkar.

Mr Krishnaswami Bharathi accorded support to the Articles but expressed surprise at the deletion of Article 188. He said that Article 188 was accepted after a two-day debate, only in a state of grave emergency the Governor was invested with some powers and he must communicate forthwith to the President. The President, therefore, would be seized of the subject and could act immediately. Article 188 was incorporated only to prevent the possibility of an organized coup and breakdown of communication and to meet the contingency for immediate action. The man on the spot should be given power to deal with such a situation so that it might not deteriorate.

Mr Naziruddin Ahmed said that the way changes were being made in the Draft Constitution showed that the Drafting Committee had become actually a drafting committee. He held that, unless the States were given enough power, they would lose interest in their work and hence become irresponsible.

He maintained that Article 188, which was sought to be deleted should not be abolished altogether. If the Governor was given power, he would consult his Ministers who would then feel their responsibility, which would be a remedy for meeting all situations. He felt that grant of exclusive power to the President to promulgate a state of emergency and the encroachments made by the Centre on provincial subjects indicated that they were unconsciously drifting towards a dictatorship. He said that he was in favour of giving the President over-riding power but not that not exclusive power.

He was afraid that the proposed emergency Articles would create bitterness which would result in the Centre losing its popularity in the provinces.

Mr Naziruddin Ahmed had not concluded when the House adjourned for the day.—P.T.I.

Acquisition Of Private Property By State

DISCUSSION BY C.A. CONGRESS PARTY

The Congress Party in the Constituent Assembly yesterday discussed Clause 24 of the Draft Constitution in respect of the acquisition by the State of private property.

It is understood the meeting had a heated discussion.

The Finance Minister, Dr Matthai, who also attended the meeting is believed to have placed before the Party his point of view.

The main issue before the Party is on the payment of compensation in case of acquisition by the State of industrial or landed property and whether it should be a justiciable issue or not.

No decision could be arrived at in view of the various opinions expressed, and it is understood that the Party will take a final decision on the subject at its meeting today.—P.T.I.

Hindustan Times 4-8-49.

DEBATE ON PRESIDENT'S POWERS

AMBEDKAR EXPLAINS SCOPE OF ARTICLES

(By Our Special Correspondent)

NEW DELHI, Wednesday.—The cup of patience and tolerance of the listening members of the Constituent Assemblf welled over today after two of their speaking colleagues had rather overdone their critical part during the debate on provisions empowering the President of the Union to take over the administration of any unit in the event of a breakdown of the Constitution there.

The critics were the incorrtgibles, Mr Kamath and Mr Shibban Lal Saksena. Their performances might as usual have been ignored, but they were out to hit. The Gita-reciting Mr Kamath pitched his loud voice a seule or two higher when he charged the sponsors of the provisions with dishonesty. Mr Saksena was no less agitated when parrot-like he repeated that the provisions would make a farce of provincial autonomy. He, too, was louder but he showed his agitation more by telescoping even long-winded phrases into words of half a syllable.

The provocation was nothing more than a balanced, soundly argued presentation of the provisions by Dr Ambedkar. It was the duty of the Union, he explained, to protect every unit and also to maintain the Constitution. This was the fundamental on which the other provisions were based. The units were sovereign in the fields allotted to them as the Constitution was a federal one. Any invasion of their sphere must not be wanton, arbitrary or unauthorized by law. It was, therefore, laid down that the Union had the responsibility to protect the units.

The procedure proposed was that the President would act on a report from the Governor or otherwise. He would take over both the executive and legislative functions, but his proclamation would not last more than two months after which Parliament would have to ratify it. Parliament again could not keep the normal constitution in suspension for more than six months. At the end of every six months it must ratify the proclamation, and Central control could not continue for more than three years, which was the outside limit.

Messrs Kamath and Saksena fol-

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C.A. Proceedings

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lowed one another in attacking the provisions and after them came Mr Zaidi, restrained though obviously irritated by his predecessors. Calmly, but firmly, he denounced the hair-splitting arguments of those with a legalistic approach to the work of constitution-making. What mattered was the spirit of democracy, not the contents of a written constitution. It was dangerous to be too democratic. They must learn to be practical in their attitude to the whole problem of administration.

Dr Punjabrao Deshmukh tried to counter this argument by giving support to Mr Kamath, while at the same time depricating what he called his vehemence. But the next speaker, Mr Raj Bahadur, came like an avalanche and all but swept the grinning Mr Kamath away. He was loud, he was angry and not afraid to denounce Mr Kamath and his supporters.

Mr Alladi Krishnaswami Ayyar had at this stage to intervene to explain why the provisions were necessary and commended them as very carefully drafted.

Opponents of the provisions found their case strengthened when Pandit Kunzru joined them in condemning what he considered unnecessary proposals. The Central Executive, he felt, had already been given enough powers under other provisions for the proclamation of an emergency. Why should they be vested with additional powers when the kind of situation contemplated might not even arise?

Mr K. Santhanam tried to mollify the critics by suggesting that the provisions should by convention be used only when there was either a breakdown of the constitution or the fear of an economic collapse. Of course, no one would complain if the provisions were used at times of danger to the security of the country, whether from external aggression or because of internal disturbances. The provisions, he made it clear, were in no way undemocratic. If the Centre took over the administration of a unit it would still be in the hands of popular representatives. In fact the Centre was more representative than even the provinces. What objection could anyone have to Parliament elected on adult suffrage controlling a disturbed part of the country?

The Bombay Chronicle

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The more I study the world, the more am I convinced of the inability of brute force to create anything durable.

—NAPOLEON

THE PRESIDENT'S POWERS

The emergency powers of the Union President, under the article of the Constitution now accepted, are very wide in scope. The time of a declared emergency is limited to two months whilst the basis for proclaiming an emergency has been extended to cover "threat of war or external aggression or internal disturbance". Much of the argument in opposition to this provision failed to take note of the elementary fact that the President's special powers come into operation after and not before the Constitution breaks down. Of course, it is "unconstitutional" and the whole purpose of including such a provision for tiding over anarchic conditions is to provide for a return to normal as soon as conditions improve. It has been suggested that the President as the head of the Union's armed forces can create a national emergency and establish a military dictatorship. If there is genuine ground to fear such a development, no constitution can save the country and it is useless to indulge in attempts to provide checks and restraints.

The main necessity is that the President's emergency should be limited to the shortest possible time and that the restoration of normal conditions is made easy. One of the members of the Constituent Assembly remarked that the Constitution of the Weimar Republic alone had a similar provision and that it gave rise to Nazism. This is an extraordinary reading of Nazi politics and ignores the reality that the Weimar Republic fell because the Government failed to defend the Constitution and to use its emergency powers. It also confuses the powers of the Reich President with the powers proposed for the Indian Union President, vastly different though they are. The experience of the past few months since the Indian Government was shorn of its emergency powers to assume control of a province ought to satisfy all who have doubts of the necessity of such powers. And granted that they are necessary, it is best that they should vest in the President who must be above party.

The original draft restricted an emergency to war or domestic violence; the amendment has extended it to "threat of war or external aggression or internal disturbance" which certainly gives ample occasion to safeguard the interests of the nation well in advance of ruin. The critics of the provision felt that too much power was reposed in the President and sought to impose on the head of the State the obligation to consult the Central Cabinet before proclaiming an emergency. The assertion of the supporters of the clause that such consultation is envisaged by the members of the Drafting Committee, was halting support, and it missed the main point. What the Drafting Committee intended is not part of the Constitution and it will not serve any purpose later. But circumstances can well be visualized when it would be easier for the Head of the State to assume the responsibility for handling a crisis rather than to share it with the Cabinet which might conceivably be divided and even hesitant. Not enough attention has been paid, except by Dr B. R. Ambedkar, the Law Minister of the Government of India, to the implications of curtailing the duration of a proclaimed emergency to two months in place of the original six. This should ensure that swift action will be taken to meet any threat to security. The President, moreover, is under obligation to place the proclamation before each House of Parliament, and the opinion of the people's representatives will no doubt influence the President even though Parliament has no authority to annul the proclamation. All things considered, the provision is necessary and it will have the support of public opinion.

HINDUSTHAN STANDARD

AN INDEPENDENT ORGAN OF INDIAN NATIONALISM

CALCUTTA, THE 6TH AUGUST, 1949.

EMERGENCY POWERS

LIVELY debate took place in the Constituent Assembly on the Articles relating to the emergency powers of the President. All the relevant Articles with the exception of one have been adopted in an amended or modified form. These give wide powers to the President to handle emergency situations.

Under Article 275, if the President is satisfied that a grave emergency exists whereby the security of India is threatened, whether by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency which shall, however, be laid before Parliament and shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. It has been provided that a Proclamation of Emergency may be made before the actual occurrence of war or aggression if the President is satisfied that there is imminent danger thereof. According to Article 276, when a Proclamation of Emergency is in operation the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised, and also in such a situation, the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers or imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter. The Proclamation of Emergency will, further, have the effect of suspending Article 15 relating to some fundamental rights.

Article 188 relating to the Governor's power of proclamation of emergency has been deleted. A new Article 277A, has been added. This Article provides that "it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution." Article 178 empowers the President to suspend the Constitution, wholly or partly, of a State if he is satisfied that the Government of that State cannot be carried on in accordance with the provisions of the Constitution. It also empowers the President to declare that the powers of the State legislature shall be exercisable by Parliament. The Proclamation by the President under this Article shall cease to have effect at the expiration of two months unless further extended by Parliament.

It will be seen that the Governor has been given no power of proclamation of emergency. It should also be clear that the purposes of the Articles 275 and 278 are very different. Article 275 becomes operative in case of war or aggression or threat of such occurrences. And Article 278 provides for the failure of the constitutional machinery in a State due to causes other than war or aggression.

To say that the emergency provisions confer very wide powers on the President and that similar provisions do not exist in any other federal constitution of the world would be to point out what is really a fact. But to criticise these provisions on this ground alone will be blindness to reality. No constitution can fail to take account of circumstances, and situations attending its birth. It should not be forgotten, as we have urged frequently in these columns that our Constitution is being born at a time when the world, suffering from the devastating effects of two global wars, is being threatened with a third. Security of the State should be the first consideration at the present moment, particularly in India which has also a number of internal enemies in the shape of fissiparous tendencies and other anti-social elements. To urge, as some members have done, that the emergency provisions are a nullification of provincial autonomy is to forget that these provisions are to be operative only in exceptional circumstances and also that, in an emergency like war, security is of far greater importance than provincial autonomy. As for the criticism, also made on the floor of the House, that some of these provisions are indistinguishable from the ordinance rule under the British, it must be said that the criticism is fundamentally fallacious. In the first place, the criticism ignores the present context of freedom. Secondly, as regards the States, the provision regarding the failure of their Constitutional machinery is entirely different from the much-hated Section 93 of the Act of 1935. Under Section 93 of that Act the Governor was responsible to a foreign Government for his actions. The present provision in our Constitution, however, does not envisage the denial of popular rights. It only provides that under certain circumstances it is the popularly elected Central Parliament, which will also contain the representatives of the States, shall exercise the rights of the State legislature.

The criticism was also made in the Assembly that to vest a single person with such drastic powers is very objectionable. But it must not be forgotten that the President has been given absolutely no discretionary authority under the new Constitution. He will have always to act on the advice of his Cabinet. The Proclamation of Emergency cannot be made except on the advice of the popularly elected Central Cabinet. Thus all the powers conferred by the Emergency Provisions are meant for being exercised, in the final analysis, by the Central Cabinet. If, however, on any occasion any President is foolish enough to exercise these powers at his own discretion, he can be impeached for violation of the Constitution under Article 50 and thrown out of office.

We believe, therefore, that the emergency Provisions of the Constitution as adopted by the Constituent Assembly are a salutary safeguard against the dangers that may threaten our national existence in future and are calculated to strengthen both the Constitution and the State.

THE STATESMAN

DELHI, AUGUST 9, 1949

PRESIDENTIAL POWERS

UNDER India's Draft Constitution as originally published, the President was granted very extensive powers. To them was later added by amendment that of appointing provincial Governors, originally intended to be elected. The argument, a perfectly sound one, was that this concentration existed primarily on paper: many of the exceptional powers, it was hoped, would never, or very rarely, be used; in any case, except in time of constitutional deadlock, they would only be used by and with the Ministry's advice; but contingencies, however remote, had to be envisaged in which they would be needed. Now, however, the Constituent Assembly has suddenly been faced with a whole set of amendments. The entire position would therefore seem to require thoughtful review before it is finalized on third reading.

Few will deny the necessity of an ultimate reserve of State power in these troubled times. Experience in further Asia is enough to show this. Special powers of a kind have recently been employed in countries with so solid a democratic tradition as Britain and Australia. The question, however, is one of degree. In Britain, all orders under the Emergency Powers Act, 1921, must be laid before Parliament within five days—if necessary, by summoning a special session; in India, Article 275 originally provided that a proclamation of emergency should run for six months unless approved by Parliament, a period now reduced to two; however, if Parliament is in recess, or (an important point) if it is dissolved before approving, the proclamation will run till 30 days after the House of the People next sits, which may not be for six months. Parliament may have its life extended during an emergency by Presidential proclamation for yearly spans; no legislative decision is necessary, as it is in Britain. Habeas Corpus, in Britain, the USA and other democratic lands, can only be suspended by decision of the Legislature, which in modern times is very rare; India's Article 280, both in original and revised forms, permits suspension, by mere proclamation, of Article 25 guaranteeing access to the courts for enforcement of fundamental freedoms; uneasiness over this Article is hardly surprising, and it has wisely been reserved for later consideration.

Opinion in the Constituent Assembly on these and other provisions was, not unnaturally, divided. Inclination to extremes seems undesirable; these are matters which should be settled by plain common sense. No sound objection can, we think, be taken to the redefinition of what constitutes an emergency, internal or external. The Centre's powers to supersede Administrations in the States (former provinces and Princely units) may seem drastic, and uncomfortably reminiscent of the old Section 93. However, sad experience shows that danger of provincial deadlock or incapacity did not die with British rule; moreover, since the President is now to appoint Governors, it seems reasonable that the President, rather than his nominee, should be initially responsible for exercising the special powers formerly attached to their office.

On the whole, in the controversy between centralism and regionalism, we favour a strong Centre, as essential to the stability and ordered progress of a modern State. However, by Centre we mean the Federal Legislature, Executive and Judiciary—not any one of those three to exclusion of the legitimate functions of others. Throughout discussion of India's Constitution it has been assumed that the President will act on the advice of the Ministry, and that the Ministry will be responsible to Parliament. The second proposition is indeed formally laid down in Article 62; the first is not laid down anywhere, nor, perhaps, could it be, since in time of Ministerial deadlock the President must in the last analysis assume personal responsibility. Equally no formal attempt is made to associate Ministry or Parliament with exercise of the President's special powers, except for possibly belated review, though these may override both the Legislature's and the Judiciary's functions. The Executive would naturally, in its own interests, take Parliament into its confidence as far as possible. It might, however, be considered whether, in some Articles at least, formal provision to that effect might not be feasible.

Recent debates have certainly underlined once again the need for time and caution in deciding fundamental questions. The hope expressed in certain circles, that the Constitution's second reading would be completed by Independence Day, we considered from the beginning over-optimistic. Now the Constituent Assembly has already deferred action on the powers of Upper Houses in the States and the Presidential power to suspend fundamental rights. In refusing to be hustled it is, we consider, entirely wise. It is engaged in laying down the fundamental law of the land; it should take all the time it requires to do the job properly, for a Constitution otherwise devised would not be in keeping with India's dignity or adequate to her needs.

Leader 8/18/49

Emergency Powers

THE Constituent Assembly discussed last week two of the most important articles of the draft constitution, namely articles 275 and 278. If the President is satisfied that a grave emergency exists whereby the security of India is threatened whether by external aggression or internal disturbances, he may by proclamation, under article 275, make a declaration to that effect. The proclamation of emergency will have a far-reaching effect. Where a proclamation of emergency is in operation, the executive power of the Union shall extend to the giving of directions to any state as to the manner in which its executive power is to be exercised. The power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India and authorities of the Government of India in respect of that matter. Article 278 provides that if the President is satisfied on receipt of a report from the Governor, or ruler of a state or otherwise, that the Government of the state cannot be carried on in accordance with the provisions of the constitution, he may by proclamation assume to himself the functions of the Government of the state, including the powers of the Governor and the legislature and declare that the powers of the state legislature shall be exercisable by or under the authority of Parliament.

The articles mentioned above gave rise to heated discussion. Critics said that the President's emergency powers nullified provincial autonomy. 'Let us wind up the Govern-'ment and go home.' There can be no question that the powers conferred upon the executive are large and sweeping. If they are abused the consequences will be serious. In other countries the executive has abused emergency powers. The Weimar Constitution of Germany provided that if public safety and order in the Reich were materially disturbed or endangered, the President might take the necessary measures to restore them and might do this by using the armed forces. He could also suspend the various fundamental rights enumerated in the constitution. These powers were intended to be used only in a grave national crisis. But actually they were utilized by the ministry from the outset to disregard the regular law-making bodies and govern the German by the issue of executive decrees. The executive conjured up one emergency after another. The consequences of this misuse of emergency powers were tragic. But the moral of what happened in Germany is not that the executive should not be given emergency powers. The moral is that the Germans were not fit for democracy. Democracy was an exotic in Germany.

There can be no question as to India's fitness for democracy. Democracy is not an exotic in India. The Indian panchayats are among the oldest democratic institutions in the world. It cannot, therefore, be said that what happened in Germany must happen in India also. Dr. Ambedkar was right when answering the question whether the articles under discussion were liable to be abused, said, 'I may 'say that I do not altogether 'deny that. There is a possibil-'ity of these articles being abus-'ed and being employed for poli-'tical purposes. But that objec-'tion applies to every part of the 'constitution where the centre 'has been given power to over-'ride the provinces. The proper 'thing to expect with regard to 'these articles is that they will 'never be brought into opera-'tion and that they will remain 'a dead letter.' But though it is to be hoped that an emergency necessitating the use of the articles will not arise, it is not wise to take risks. The executive must be prepared to meet all emergencies. The world is passing through very troublous times, of which one of the features is the occurrence of coups d'etat. In such circumstances the provision of emergency powers is more a bulwark of than an impediment to autonomy.

C.A. ADOPTS ARTICLE ON FINANCE COMMISSION

BORROWING POWERS OF UNION & STATES FIXED

DEBATE ON CITIZENSHIP TODAY: 140 AMENDMENTS TABLED

Brief speeches and quick progress characterized the proceedings of the Constituent Assembly yesterday when it adopted seven more Articles relating to the distribution of revenues between the Union and the States, decided the powers of the Union and the States to borrow upon the security of revenues of India and took up the important article relating to citizenship.

The provisions in the Constitution adopted by the House yesterday cover the appointment of a Finance Commission by the President, within two years of the commencement of the Constitution, the obligation imposed on the President to place before the Parliament a memorandum about the action taken by him on the recommendations of the Commission, power of the Union and the State to make grant for public purposes out of the revenue, the custody of public moneys, adjustments in respect of certain expenses and pensions of persons who had served before the commencement of the Constitution and the powers of the Union and States to borrow, conditioned by the limitation which Parliament could prescribe from time to time.

A new series of citizenship Articles the drafting of which proved a "severe headache" to the Drafting Committee was moved by Dr Ambedkar, followed by a 30-minute speech elucidating various points.

The Law Minister said that these were only ad hoc provisions and the business of laying down the permanent law of citizenship had been left to Parliament. There was nothing unalterable therefore in the provisions of the Article, relating to the qualifications for citizenship.

Over 140 amendments have been tabled to the article and the House is expected to start dealing with them today.

The Assembly first adopted Article 260 on the Finance Commission, following a brief reply to yesterday's debate by Dr Ambedkar.

The work of the five-man Commission will be to make recommendations to the President on: (1) the distribution between the Union and the States of the net proceeds of taxes which are to be divided between them and the allocation between the States of the respective shares of such proceeds;

(2) The principles which should govern the grants-in-aid to the States out of the revenues of India;

(3) The continuance or modification of the terms of any agreement entered into by the Union with Indian States in respect of federal taxes; and

(4) Any other matter referred to the Commission by the President in the interests of sound finance.

The House rejected Pandit Kunzru's amendment seeking to exempt revision of the distribution of net proceeds of income tax from the purview of the Finance Commission under the first term.

Replying to the debate Dr Ambedkar said that so far as income-tax was concerned the allocation and distribution of net proceeds were left to the President to be determined, while the distribution and allocation of Central duties of exercise were left to be determined by law made by Parliament. Under the [illegible] provided that the Finance Commission [illegible] recommendations with regard to the distribution and allocation not merely of the [illegible] distributable by law made by Parliament [illegible]

Pandit Kunzru wanted to take out the question, of distribution from the recommendation of the Finance Commission would be decided by Parliament and not by the President and his Cabinet. The Article before the House, Mr Kamath said, was one of the articles which sought to centralize more and more power in the President.

Prof. Shibban Lal Saksena (U.P.) moved an amendment seeking to vest the power to take action on the recommendations of the Commission in the Lower House. "This is a matter of vital consequence," said Prof. Saksena; "the Article as it stands cuts at the very roots of democracy. The House of the People must have the final say on this important question."

Dr Punjabrao Deshmukh (C.P.) said that Mr Kamath and Prof Saksena were labouring under certain misconceptions. While the language of the Article could be improved, it was clear even as it was that the Article did not give any additional power to the President than what was embodied in Articles 254 and 255 (distribution of jute duty and grants-in-aid).

Pandit Thakur Das Bhargava (East Punjab), supporting the principle of the amendments moved by Mr Kamath and Prof. Saksena, said: "If the Cabinet or the President are the sole judges on the recommendations of the Finance Commission, I do not think it will inspire confidence in the provinces. The House of the People must have the final say in regard to financial matters."

Prof Shah's Misgivings

Prof. K. T. Shah, Bombay economist, also supported the amendments. He was not happy over the entire chapter relating to the appointment, powers and activities of the Finance Commission. "The Commission," he said, "is so much more additional patronage in the hands of the executive and will act, in so far as it is empowered under this section to act against the inherent rights of a sovereign Parliament."

Mr Biswanath Das (Orissa) contended that no patronage of the executive had been conferred by a provision of an appointment of a Commission and said that learned Prof. Shah saw ghosts where there were none. The Finance Commission would be a creation of Parliament for conducting a searching inquiry into the financial conditions of the States which would be placed before Parliament.

Mr B. N. Munavalli (Deccan States) supported the amendments and said if these were not accepted Parliament would only have power to approve and not to disapprove.

Mr M. Ananthasayanam Ayyangar, appreciating the principles underlying the amendments, however, felt that as they stood the amendments would not serve the purpose. He wanted the President to place before Parliament not only the action he had taken on the recommendations of the Finance Commission but also his recommendation in respect of matters where Parliament has to take action.

Commission's Limited Powers

Mr T. T. Krishnamachari (Madras) pointed out that the proposed Finance Commission was only an administrative machinery with limited objective. It had no more sanction behind it than a parliamentary Act. The provi[illegible] should be made independent of the Finance Commission, though he might consult the commission and act in [illegible] for the purpose of initial distribution of income-tax.

The Law Minister pointed out that the question was whether the President should be left altogether independent of any recommendations of the Finance Commission in varying the distribution of income-tax between the provinces and the centre. He appreciated that if this was left [illegible] President on the recommendations of the Finance Commission the hands of the President might be so tied that he would yield to the recommendations of the Commission at the clamour that might be raised by the provin[illegible]

He shared the feeling that the Centre should be made independent so far as finances were concerned. Nothing should be done in the Constitution which would jeopardize either the political or financial existence of the Central Government. He, however, thought that consultation with the Finance [illegible] then the hands of the President to resist the clamour of provinces. The Finance Commission, he said, would be acting as a sort of a buffer between the President and the provinces that might be clamouring for a greater percentage of allocation.

The House rejected Pandit Kunzru's amendment with two amendments moved by Dr Ambedkar.

Differences Over Art. 261

The House next took up Article 261, which says that the President shall cause every recommendation made by the Finance Commission under the provisions of this Chapter together with an explanatory memorandum about the action taken thereon to be laid before each House of Parliament.

Mr H. V. Kamath (C.P.) moved an amendment the effect of which would be that the action to be taken on the Constitution by the Drafting Committee only to assure the provinces that they would have a fair deal.

Parliament could determine the principles of allocation but the actual quantum was a matter for the executive to determine and if Parliament were to undertake upon itself the adjudication of the claims between various provinces then the creation of a Finance Commission was not at all necessary.

Mr Brajeshwar Prasad (Bihar) and Mr Rohini Kumar Chaudhuri (Assam) opposed the amendments while Mr Jagat Narain Lal (Bihar) wanted some provision to be made by which the recommendations of the Finance Commission could be reviewed in special cases by somebody.

Dr Ambedkar, holding that the amendments were based on complete misunderstanding of the provisions, pointed out that it had already been decided that in regard to distribution of income-tax the President should determine the allocation on the recommendations of the Finance Commission. That being so it was not possible now to say that in regard to the distribution of income-tax the matter might be left to Parliament. That issue had been closed.

Amendments Rejected

As regards the distribution of revenue from Central Excise duties, it was clear from the Articles already passed that this matter should be governed by law made by Parliament and the President could not do it himself. The amendments were, therefore, unnecessary.

The House rejected the amendments of Prof. Saksena and Mr Kamath and adopted the Article.

More Articles Passed

The House adopted without discussion Article 262, enabling Government to make grants for any public purpose and Article 263 (custody of public moneys) with certain amendments.

The House adopted Article 267, relating to adjustments in respect of certain expenses and pensions for services rendered under the Crown of India. Where the expenses have to be shared between the Union and a State and no agreement is reached on such share, the Article provides for the appointment of an arbitrator by the Chief Justice of India.

The House rejected an amendment by Prof. Shibban Lal Saksena seeking to substitute the expression "Crown in India" by "Government of India prior to August 15, 1947." Prof. Saksena said that the word "Crown" reminded him of "the period of our slavery" and he did not like it to be put in the Constitution. It also rejected amendments moved by Mr H. V. Kamath, who said that his object was to simplify the English language. As Bernard Shaw had pointed out, a Chinaman just said "no can" instead of the usual expression, "I regret I cannot." Mr Kamath did not want to follow the Chinaman but he would like the language to be clear and concise.

Borrowing Powers

The House then took up Article 268, which says that the executive power of the Union extends to borrowing upon the security of the revenues of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Mr M. Ananthasayanam Ayyangar hoped that Parliament would take advantage of the new Articles to devote attention to Government's borrowing programme than it had devoted so far. Loans imposed obligations not only upon the present generation but on future generations also. Enough attention was not being paid now to the question. Many of the loans floated by provincial Governments recently were not subscribed and some of them had had to be withdrawn. He suggested that the advice of the Reserve Bank should be sought on Government's borrowing schemes.

Dissentients' Fears

Prof. Shibban Lal Saksena felt that such sweeping powers as were contemplated in the Article should not be given to the executive. Parliament must be taken into confidence on every loan.

Mr H. V. Kamath said that Parliament should not merely set the limits of the loan but also approve of the purpose for which the loan was sought to be raised but ensure that the terms of borrowing did not conflict with the nation's internal and external policy. This was particularly important when loans were sought to be raised abroad, as many of the foreign loans might carry with them military and international commitment.

Prof. K. T. Shah said that in regard to borrowing not only the power of the executive but even the power of Parliament should be restricted. He wanted that provision should be made by which the executive or the Parliament would not be able to mortgage the primary resources of production like mineral wealth and rivers.

Dr Ambedkar in his reply pointed out that the power of the executive to borrow was not unfettered and it was subject to such limitations as the Parliament might prescribe. He was sure that Parliament would even enact every year a debt regulation prescribing or limiting the power of the executive and drawing up the borrowing programme for the year. Parliament was free to say that the borrowing should not be done on the pledging of the resources of the country. He had no doubt that Parliament would deal with the question of borrowing seriously and keep on enacting laws so as to limit the borrowing authority of the Union.

The House passed the Article.

Loans Raised By States

The House also passed Article 269 relating to the power of borrowing by States. Dr Ambedkar moved an amendment stating that the Government of India might under a law made by Parliament make loans to any State or give guarantees in respect of loans raised by any State. The original Article gave the Government of India a free hand and the amendment rendered the action of the Centre in respect of States loan subject to the control by Parliament.

Mr B. Das thought that the Constitution imposed a great responsibility on Parliament and with his 25 years of experience he could say that Parliament paid little attention to the question of borrowing. He said that Parliament would not be able to appreciate the position of the national credit of each State and even the [illegible] unless the Auditor-General provided the members of Parliament with full reports on the credit conditions of the provinces.

Mr K. Santhanam argued that it was not open to the Government of India to pledge any resources of provinces or the consolidated funds of India would be the security for loans. It was the general security and the credit of the people that could be a guarantee for loans and there was no question of any particular resource like railways being pledged.

The House accepted the amendment of Dr Ambedkar.

Citizenship

Dr Ambedkar next moved the Article on citizenship. "Except for one other amendment in the Draft Constitution," Dr Ambedkar said, "I do not think that any other Article has given the Drafting Committee such a headache as this particular article. I do not know how many were prepared and how many were destroyed as being found to be inadequate to cover all cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon this draft which satisfies most people if not all."

The President said that there was a "veritable jungle of amendments"—numbering about 140—to this Article.

Dr Ambedkar himself had five amendments.

Mr Krishnamachari had two more amendments, which Dr Ambedkar said he was accepting.

Amended Draft

The amended draft, which substitutes the original Articles 5 and 6, reads:

5. "At the date of commencement of this Constitution, every person who has his domicile in the territory of India and (a) who was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5A. "Notwithstanding anything contained in Article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of the commencement of this Constitution if (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and (b) (i) in the case where such person has so migrated before July 19, 1948, he has ordinarily resided within the territory of India since the date of his migration, and (ii) in the case where such person has so migrated on or after July 19, 1948, he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him, therefor, to such officer before the date of the commencement of the Constitution in the form prescribed for the purpose by that Government, provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5 B. "Notwithstanding anything contained in Article 5 and 5A of this Constitution, a person who has after March 1, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India, provided that nothing in this Article shall apply to a person who after having so migrated to the territory now included in Pakistan has been permitted by or under the authority of any law to return to the territory of India with a view to taking up his fixed habitation in that territory and every such person shall for the purposes of clause (b) of Article 5A of this Constitution be deemed to have migrated to the territory of India after July 19, 1948.

5C. "Notwithstanding anything contained in Article 5 and 5A of this Constitution and subject to the provisions of any law made by Parliament any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him, therefore, to such diplomatic or consular representative whether before or after the commencement of this Constitution in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

5D. "Every persons who is a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

6. "Nothing in the foregoing provisions of this part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Too Many Changes

Mr Naziruddin Ahmed (West Bengal) said that the different amendments, which were in fact amendments to the Constitution itself, were a bit confusing to him, eventhough he had been in the profession of law for a long time. "We have been departing from the Draft Constitution every day. Today the departure is still more complete," he said.

"I hope there will be some limit to these deviations from the original Constitution. I devoutly wish that the Constitution would be finished as quickly as possible. Otherwise this taste for new changes will go on unabated."

Mr Rajendra Prasad said that he had considerable sympathy with Mr Ahmed's objection. Members would, however, remember that when these Articles were left over for further consideration, it was expected that fresh amendments would be brought in. In fact, in that view, the Drafting Committee had considered the old draft and proposed a new one.

The President added: "I will circulate the consolidated amendments among the members today and take up discussion of the amendments to-[illegible]

The new Article, Dr Ambedkar said, referred to citizenship not in a general sense but to citizenship on the date of the commencement of the Constitution. "It is not the object of this particular Article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament."

Parliament, Dr Ambedkar said, might take away the citizenship from those who were declared to be citizens on the commencement of this Constitution by the provisions of this Article but might make an altogether new law embodying new principles.

"That is the first proposition that has to be borne in mind by those who will participate in the debate on this article. They must not understand that the provisions that we are making for citizenship on the date of the commencement of the Constitution are something permanent and unalterable. All that we are doing is to decide *ad hoc* for the time being."

Five Categories

The Drafting Committee had provided for five different classes of people who could, provided they satisfied the terms and conditions laid down in this Article, become citizens on the day on which the Constitution commenced. These five categories were: (1) Persons domiciled in India and born in India, who formed the bulk of the population of India; (2) persons who were domiciled and had resided in India, but who were not born in India. For instance, subjects of Portuguese and French Settlements in India or the Iranians for that matter who had come from Iran and had resided here for a long time and undoubtedly had the intention of becoming citizens of India; (3) persons who were residents in India, but had migrated to Pakistan; (4) persons resident in Pakistan but had migrated to India; and (5) persons who or whose parents were born in India but were residing outside India (Indians overseas).

Dealing with two categories of persons who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but had migrated to India, Dr Ambedkar said that the latter's case was dealt with in Article 5A. Persons who had come to India from Pakistan were divided into two categories—those who had come before July 19, 1948, when the permit system was introduced, and those who had come from Pakistan to India after that date. Those who had come before that date would automatically become the citizens of India. In regard to others, they would be entitled to citizenship on the date of the commencement of the Constitution provided a certain registration to an officer appointed by the Government. If they were registered they would become citizens.

Referring to those people who had migrated to Pakistan but subsequently returned to India, Dr Ambedkar said that if a person had returned to India on the basis of a permit which would entitle him to resettle or permanently return, he would be entitled to become a citizen of India on the commencement of the Constitution. Others would not be entitled to citizenship.

This was provided for in Article 5B, which would enable only those persons who had returned from Pakistan after they had migrated there, on the basis of a permit issued to them for resettlement permanently in India, to acquire Indian citizenship.

Dr Ambedkar pointed out that it was not possible to cover every kind of case for conferring citizenship on the date of the commencement of the Constitution. If there were any categories of persons who were left out, power was given to Parliament subsequently to make provision for them.

He hoped the House would accept the Article with his amendments. On the conclusion of his speech the House adjourned for the day.—P.T.I.

C.A. Adjourns Tomorrow To Meet On August 18

The Constituent Assembly will adjourn on Friday, August 12, and will reassemble on the following Thursday, August 18. The President, Dr Rajendra Prasad, who wanted to know the sense of the House in regard to the programme for the next week, pointed out that August 15 and August 17 are holidays and said that it was suggested that the House might not meet on the intervening Tuesday so that the members might have a continuous holiday for five days from Saturday.

The House agreed to the proposal to adjourn on August 12 to reassemble on August 18 and also to sit on Saturday, August 20.—P.T.I.

...e Hindustan Times

...HURSDAY, AUGUST 11, 1949

...EDERAL FINANCE

In the process of bringing the Indian States into line with provinces in the new constitution, the report of the Krishnamachari Committee on the integration of the finances of the States with the finances of the Union, now published, will become a landmark. As the Committee points out, the essential points in the new relationship are that there shall be a Union of India in which provinces and States shall be equal partners and in which all power and authority are derived from the people. Before the present process began, the States were discharging both federal and provincial functions. The Committee conceives of the process of financial integration as a splitting up of the States' functions in these two respects, the integration of Central aspects with the Union Government and a transitional arrangement for administrative transfer of these functions to the Central Government and for necessary financial adjustments. Integration, the Committee says, need not be gradual but should be complete in all essential respects by April 1, 1950, the Centre taking over all federal sources of revenue and expenditure. But in order to cushion the effect of the change, the Committee wants it to be brought about in convenient stages during the next ten years. Assets and liabilities are also to be shared between the Centre and the States according as they fall in their respective spheres of responsibility. The demand for compensation for the taking over of federal assets, the Committee dismisses as absolutely untenable, as what is happening is not the purchase of these assets by the Centre but a pooling of the federal resources of the States and provinces in the interests of the people of India as a whole, to be administered by a Central Government deriving its authority from the people. That all these vast changes should have been brought about in consultation with the States who have all agreed to them but for a single exception is, indeed, matter for congratulation.

If the scheme recommended by the Committee is accepted, income-tax will be collected from all areas, assessment and collection being made by the Central Government, from the next financial year. But since the rates in Indian States are lower, they will be raised to the Indian level in two or three stages. There is to be no departure from accepted principles in the sharing of the divisible pool of income-tax. Internal customs duties which were an impediment to the free flow of trade are to go completely from April 1, 1950, the loss in revenue being met in most cases by the introduction of the sales tax. Customs, Railways, Posts and Telegraphs will also be taken over by the Centre. The States forces will become a charge on federal revenues while the question whether the privy purses of the former rulers should be a State or federal responsibility is left open as a political question to be decided on the political plane. It is obvious that when the process is completed, some States whose main sources of revenue were federal will face a deficit. This loss is to be made good by the Central Government for five years by guaranteeing the whole amount or the State's share from the divisible pool of federal resources, whichever is higher. Thereafter, the amount will gradually diminish. Where, as a result of integration of federal subjects with the Centre, the State's finances stand to gain, the loss to the Centre is not to be made good by the States.

In one portion of its report the Committee points out how this integration will be in the interests of the States, as well as India as a whole. States and provinces will become equal partners in the Union contributing to Central finances on the same basis and sharing in the benefits of grants and other financial assistance from the Centre. Development plans of States will benefit from Central help and administrative standards will improve. Policies will now become effective over the whole country and there can be a co-ordinated trade and tariff system. While all this may be true, it is unfortunate that the boons of integration should come to the peoples of the States first in the form of increased Central levies, while the benefits will take a long time to be felt. This is, perhaps, inevitable, as the States were for long benefiting from the economic and trade policies of the Central Government, without sharing equally with the provinces in the burden of federal expenditure. But whatever the temporary inconvenience—and the Committee has tried its best to see that these are reduced to the utmost—there can be no doubt that the integration of Indian States in the Indian federal system will be to the ultimate advantage of the people of the States, as well as the rest of the country.

THE STATESMAN
DELHI AUGUST 11, 1949

CONSTITUTION AND FINANCE

THE report of the Indian States Finance Enquiry Committee has been published while the Constituent Assembly in New Delhi is considering the financial provisions of the Constitution. In all this endeavour firmly to establish the Indian Union's fiscal foundations there will be much matter for study over many months. The broad principles on which the Constitution's framers are working are in general clear. Detail, however, is complex, and for initial insight into practical effects it will presumably be necessary to await the next general budget. Some matters, notably connected with distribution of revenues between Centre and units, are to be the subject of further inquiry. That seems to imply a transitional period of uncertainty with ad hoc adjustments until, as is hoped, the first Financial Commission can suggest more enduring improvements based on experience. This may not please some who prefer cut and dried arrangements, but seems inevitable for various reasons, not least because changes in general business conditions may cause present plans not to work out as expected.

The Constituent Assembly's debate on distribution of revenues gave opportunity for pleas from poorer provinces. Administrations like West Bengal's can adduce an impressive case for a greater share of revenue collected within their jurisdiction, while East Punjab has a special claim on the Centre's liberality owing to partition's aftermath. In the present system of distribution there is much that is unsatisfactory, but as the alternatives hitherto produced have all been attacked from some quarter or other, a solution is best left, as is proposed, to expert inquirers. In the meantime percentages and grants will be prescribed by the President, suitably advised. This seems sound, as debates in the Legislature over many years show how much provincial feeling can cloud counsel. If the Centre is firm and well briefed by experts, a satisfactory system may be contrived; this will be easier done if the general economic background is favourable. Some members of the Constituent Assembly appeared to take for granted huge untapped sources of revenue. This assumption is unreal, and it is comforting that the Assembly rejected what would in effect have been a second income tax leviable for municipalities' benefit.

The Krishnamachari Committee's report introduces a new element into the argument. If princely States and States Unions are to be integrated into the Federal financial system—and they can hardly be exempted after political integration—a controversy wherein hitherto only Centre and provinces have been concerned is sharply widened. Integration's ultimate result should be advantageous for the whole country; but in early years the less developed of the units concerned will need substantial help from the Centre, and will thus rank with poorer provinces that have long pointed to urgent needs. The Committee rightly makes recommendations designed to prevent dislocation of States Unions' finances after integration, but in rejecting compensation for assets taken over it may have been more dogmatic in its arguments than circumstances warrant.

Nevertheless, a uniform Federal financial system is plainly essential for the Union's development. The complexities that have arisen in the past, for example over customs duties in maritime States, will be avoided; in princely units evaders of income tax will cease to find a refuge for their funds. In accordance with its plan for eschewing too sudden a change, the Committee reasonably suggests gradual introduction of Indian rates of income tax. The Administrations concerned will, it may be hoped, heed the warning against measures likely to reduce revenue or add to commitments. Their particular problems in a transitional period will call for a conservative financial policy.

THE RADIOACTIVE CLOCK

RECENT fundamental discoveries in physics are, now that they can be turned to peaceful uses, bearing a whole crop of further discoveries in other, unexpected, fields. Among them is the study of man's prehistoric past. Radioactivity has for some years been successfully used as a clock, to measure time intervals in remote antiquity. Disintegrating radium continually gives off small amounts of helium and lead, at a known rate. By examining the quantities of all three elements in radium-bearing geological strata (the helium providing a check on deductions from the lead and vice versa) the date of the strata can sometimes be roughly estimated, and others of similar type also dated by comparison. Until recently, however, the margin of error was too great to permit application of this method except in geology, where the time spans are in millions of years.

A new method, described in a recent special despatch, has now been devised by archaeologists to date Egyptian tombs. It is based on a radioactive carbon isotope, created by action of cosmic rays on nitrogen in the air, absorbed like ordinary carbon by plants, and then reabsorbed as food by humans and animals into their bone structure. So far experiments have only been conducted on wood found buried in these tombs, but the same technique can be used on human or animal remains. If bones or teeth are examined, centuries or millennia after death, the time that has elapsed can be estimated from the carbon's radioactive decay.

In all such methods there is the possibility of error, since they are based on a statistical concept called the "half life" of the radiant element concerned—the rate, established by experiment, at which half of it on an average disintegrates, in this case 5,000 years. However, with the carbon method the margin of error is now very small—only 200 years at present, and possibly later to be halved. Methods of such precision, or others later to be devised, may result in important extensions to accurate human prehistory.

Amrita Bazar Patrika
11-5-49.

STATE LANGUAGE

IT IS REPORTED THAT AS many as 35 amendments have been given notice of with regard to Article 99 of the Draft Constitution. That Article runs as follows:

> In Parliament business shall be transacted in Hindi or English: Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

It should be noted that this Article does not say that Hindi or English shall be the State language of India. It merely lays down that Hindi or English shall be the language to be used in Parliament. A language may be used in the legislature without being used in administrative papers. Article 99 makes no provision as regards the language in which the administration of the Centre or of the Provinces or of both is to be conducted. It would, therefore, be wrong to say that this Article prescribes the State language of India.

What is meant by the words "business shall be transacted"? Do these words relate only to the language to be used in debates or also to the language to be used in resolutions and bills? Normally the same language should be used for all purposes, but it is not inconceivable that the speakers may be allowed to use a language different from that in which resolutions and bills are framed. We have grave doubts whether in its present form Hindi is capable of expressing in clear and unambiguous terms complicated legal ideas which modern industrial society requires. Precision is one of the greatest qualities of legislation, and no Indian language is at present capable of replacing English in this respect. Ambiguous laws are a danger to society and we must not court that danger in our hurry to solve the language question. Then, again, supposing all laws are framed in Hindi, we shall require judges—judges of the Supreme Court, judges of the High Courts and subordinate judicial officers in every sub-division or taluka all over the country—who must know Hindi thoroughly enough to be able to interpret those laws. Are so many Hindi-knowing judges available now? Are they likely to be available even within ten years? Hindi-knowing lawyers will be required in thousands. Are they available? It must be remembered that the standard of knowledge of Hindi required of the judges and lawyers should be very high, for their duty will be to interpret correctly complicated laws and legal documents. Men who are now at the top of the legal profession, men who are senior members of the Bar, will hardly find it possible to learn Hindi of the highest standard at the age of, say, 45 or 50. Shall we deprive ourselves of the services of all senior and experienced lawyers who do not know Hindi?

These difficulties can be avoided if the Constitution specifically lays down that, while the debates will be conducted in Hindi or English, the resolutions and the bills will be framed in English. In future Parliament may change this dual system whenever it is convinced that Hindi has acquired sufficient strength and adjustibility for the precise expression of legal ideas. Meanwhile junior lawyers and intending lawyers may equip themselves for this change. No time limit should be prescribed in the Constitution itself for this period of transition. It will be a folly to lay down the principle that Hindi must attain a certain stage of development within 10 or 15 years. The legislators of the future may be trusted to take a sensible view of things and to substitute Hindi for English whenever the progress of the former warrants that substitution.

The majority of the proposed amendments, we are told, want that Hindi written in the Devnagri script should be the State language of India. As Article 99 deals only with the question of language to be used in the Central Legislature, it is out of place to speak of a State language in this connection. However, there is no doubt that the country as a whole wants Hindi written in the Devnagri script as the national language. Our view, which we have expressed so often in the past and which we reiterate to-day, is that in a vast and multilingual country like India one State language is not enough: two or three widely used and progressive languages should be recognised as State languages. We hope the Constituent Assembly will not reject this suggestion without serious consideration. If the final decision turns out to be in favour of a single State language, we unhesitatingly support the claim of Hindi written in the Devnagri script. We do not think that the supporters of the so-called Hindustani written in the Devnagri and Persian scripts will find favour with the Constituent Assembly. It is unnecessary, even harmful, to complicate the position by recognising two scripts for one language. If we want a single language, let us have a single script.

A few amendments, it is reported, urge that "the Hindi that the common man can understand" should be the State language. We fully concur with this view, although we are convinced that no legislation can prescribe the form of a living language. In a democratic country the national language should be the language which the nation as a whole easily understands: it should not be the treasured possession of a few intellectuals.

Nation 5-8-49

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PRESIDENT'S POWER

In justifying the Indian Union President's emergency powers to assume to himself all the functions of the Government of a state in case of a failure of the constitutional machinery there, Dr. Ambedkar is reported to have stated: "The Constitution, notwithstanding the many provisions whereby the Centre had been given powers to override the provinces was a Federal Constitution. Provinces were as sovereign in their fields which had been left to them as the Centre was in the field which was assigned to it." But unfortunately Dr. Ambedkar's statement seems to be a large draft on the credulity of the public. The internal autonomy of the states seems to be more or less fictitious. And the finishing touch to the process of reducing the autonomy or internal sovereignty of the states to the vanishing point has been given by the new provision authorising the Indian Union President to suspend the Constitution even without any report from the Governor or Ruler of a state.

No one would seriously dispute Dr. Ambedkar's theory that the Constitution should provide for some machinery against the breakdown of the Constitution. While provision should be made against any such contingency, there is no justification why the President should not act on the report from the Governor or Ruler of a state and take upon himself the responsibility of suspending the Constitution of a state without even allowing the latter an opportunity of explanation. Whether an emergency, due either to external aggression or internal chaos, actually exists or not in a state can be best judged by the local authorities. What the President sitting at a distance may regard as serious "disturbance" justifying the suspension of the Constitution may appear to the Governor or Provincial Government to be mere passing phase of political distemper of a section of people. Powers of suspension of the Constitution, be it even for a temporary period, should never be exercised except in a grave emergency. And in taking such drastic step against a state, views of the local Government should be taken into consideration and given due weight to. Anything which smacks of undiluted autocracy should be carefully avoided if the internal independence of a federating state has to be respected.

The new Article 277 lays down: "It shall be the duty of the Union to protect every state against external and internal disturbance and to ensure that the Government of every state is carried on in accordance with the provisions of this Constitution." But if the states are to be treated really as Federal units of the Indian Union, the latter should not act in a way which may compromise the internal freedom of the Federal states. But unfortunately whole conception of the new Constitution happens to be centripetal. Dr. Ambedkar's claim that notwithstanding all the provisions extending the Centre's control over the states, the Constitution was a Federal Constitution would not bear a moment's scrutiny. Distrust of the states is writ large on the Draft Constitution. Their independence in internal affairs has been effectively hedged in with irritating checks on their powers. Centralization of all powers in New Delhi seems to be the keynote of the new Constitution. Lest this too much of centralization should bring the provinces into conflict with New Delhi, Dr. Ambedkar has thought fit to be forearmed on the plea of ensuring that the Government of every state is carried on in accordance with the letter and spirit of the Constitution. The new powers placed in the hands of the President appear to be fully in tune with the fundamental conception of the new Constitution, namely, to centralize all powers in the hands of the Centre and to treat the states as subordinate in all respects to New Delhi.

The Tribune

Ambala Cantt., August 5, 1949

EMERGENCY PROVISIONS

While it would be manifestly unfair to accuse the Drafting Committee of introducing totalitarian tendencies in the draft constitution, it is, nevertheless, a fact that in its marked preference for a strong Government, it has not fully taken into account the possible abuse of authority and provided adequate safeguards against it. It is certainly desirable that the Government should be armed with sufficient powers to deal with all possible threats to the peace and security of the country but it is equally desirable that adequate legislative and judicial safeguards ought to be incorporated in the constitution to prevent the abuse of such powers. One is as important as the other. No other democratic constitution provides for the investment of powers of such drastic and sweeping nature in the executive. At least two safeguards are essential to prevent the abuse of powers—first, the wide powers assumed by the Government to meet an emergency must be subject to immediate ratification by Parliament and second, the authority of the Courts to take cognizance of the violations of fundamental rights should not be abrogated or impaired. The draft constitution provides for neither of these two safeguards. Article 275 of the draft constitution as amended by the Constituent Assembly lays down that, if the President is satisfied that a grave emergency exists whereby the security of India is threatened by external aggression or internal disturbances, he may issue a proclamation of emergency which is to be laid before Parliament and which shall cease to operate at the expiration of two months, unless, of course, it is approved and extended by Parliament. The original article provided for a period of six months instead of two. Mr. T. T. Krishnamachari, replying to the debate on Article 275, justified this provision on the ground that in a country with vast distances it was not possible to summon Parliament immediately. In many European democratic states the Executive has the power to declare a 'state of siege' but their constitutions insist upon the immediate summoning of the legislature to give its approval to the declaration. In Britain authorisation by Parliament is essential before extraordinary powers are assumed by the Cabinet. Surely, in times of emergencies Parliament can be summoned in a week's time.

Opposition to Article 275 came from two sources. Many members pointed out that the constitution should explicitly state that the President shall exercise his emergency powers on the advice of the Council of Ministers. While it is true that the constitution does not explicitly lay down that the President shall exercise all his powers only on the advice of the Federal Ministers, the whole constitution is based upon the assumption that the administration of the country will be carried on under a parliamentary system of government. Article 50 provides for the impeachment of the President for the violation of the constitution. But, while it may safely be presumed that the President shall function as a constitutional head, it would have been better if the constitution had explicitly laid down that the President shall exercise his powers on the advice of his cabinet. The assumption of such wide powers by the President was also criticised on the ground that it would reduce provincial autonomy to a farce. But the distribution of powers between the Central and Provincial Governments is, after all, a matter of convenience. During times of emergency it is of utmost importance that all legislative and executive powers should be properly co-ordinated and effectively enforced. What the friends of provincial autonomy should insist upon is that, when the Governor suspends the provincial constitution and the President assumes to himself the powers of the provincial Government, he shall immediately seek ratification of the proclamation of emergency by Parliament and that authority to legislate for a province shall vest in Parliament alone. It has been reported that at a recent conference between the provincial Premiers and the Drafting Committee it was agreed to amend Article 278 so as to make it analogous to Section 93 of the Government of India Act, 1935. Such an amendment will be definitely undesirable.

The other two objectionable articles in Part XI of the draft constitution are Articles 279 and 280. Article 279 of the draft constitution lays down that during the time the state of emergency lasts the fundamental rights of citizenship as enunciated in Article 13 may be totally suspended by the Executive. Article 280 deprives the citizen of his right to move the Supreme Court for the enforcement of his rights guaranteed to him. Frankly, it would be difficult to find many instances of similar powers, practically abrogating all constitutional checks upon the exercise of powers. In other constitutions, such powers are taken only in the event of war. But the Indian Union President is empowered to assume these powers in the event of internal disturbances. Such powers are undoubtedly necessary in the event of war but in times of peace they are unwarranted and unjustifiable. Even in times of war, the Government of the United States of America has not been empowered to suspend the fundamental rights of citizens. Such powers are undoubtedly a necessity in times of war but in times of peace they are unwarranted and unjustifiable. Even in times of war, the Government of the United States of America has not been empowered to suspend the fundamental rights of citizens. Such powers are undoubtedly a necessity in times of war but in times of peace they are unwarranted and unjustifiable. Even in times of war, the Government of the United States of America has not been empowered to suspend the fundamental rights of citizens. Such powers are undoubtedly a necessity for them. It is generally recognised that the Government should be fully armed with powers to cope with threats to peace, provided care is taken to see that they are not abused. For this reason it is necessary to provide that the powers which the Government assume are subject to immediate ratification by Parliament, that the legislative authority delegated to the executive is kept constantly under Parliamentary review and that the citizens are not deprived of their right to have access to constitutional remedies for the enforcement of their rights.

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Bombay Chronicle 6/8

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Rajen Babu Warns

No Place For Salt Tax In Constitution

ARTICLE HELD OVER IN ASSEMBLY

NEW DELHI, August 5 (P.T.I.).

"IT was not without reason that salt was selected by Mahatma Gandhi as the one tax out of so many taxes which the poor people of this country paid when he started his movement of disobedience," observed Dr. Rajendra Prasad in the Constituent Assembly today.

"I say that even today, if we are going to reimpose this tax, we will have the same kind of movement which will convulse the whole country from one end to the other."

Dr. Prasad was making an emotional apeal to the Assembly to reject Mr. Mahavir Tyagi's amendment which sought to delete the constitutional provision that no duty on salt shall be levied by the Indian Union.

Dr. B. R. Ambedkar, on behalf of the Drafting Committee, had accepted Mr. Mahabir Tyagi's amendment for the deletion of this provision when Dr. Rajendra Prasad, intervening, reminded the House the fact that Mahatma Gandhi chose this tax for civil disobedience movement during the struggle for India's freedom. Supporters of Mr. Tyagi's amendment had contended that the constitution should not bind the future generation not to impose salt tax.

In a voice choked with emotion, Dr. Rajendra Prasad said: "Before putting the amendment to vote, I desire to say a few words. I have felt considerably surprised by the attitude which has been adopted by the Drafting Committee in accepting this amendment. It was not without reason that salt was selected by Mahatma Gandhi as the one tax out of so many taxes which the poor people of this country paid when he started his movement of disobedience. It was because he felt, and we all felt, that even the poorest beggar had to pay a share of this tax that he selected this particular tax and when he made his appel (for civil disobedience), it caught throughout the country.

"There were people then who felt that this civil disobedience would not have any effect because he had selected a tax which after all had such a small incidence but they saw that within three weeks from one end of the country to the other there was hardly a village where the (salt) Law was not disobeyed.

REJECTION PLEA

"I say that even today, if we are going to reimpose this tax, we will have the same kind of movement which will convulse the whole country from one end to the other (cheers)."

I, therefore, suggest to this House to consider carefully whether it would have this (provision) in the Constitution as a rememberance, as a memento, of that glorious struggle which we had. My deliberate advice to this House is to reject the amendment of Mr Mahavir Tyagi but, of course, it is left to the members of the House to decide."

As Dr. Rajendra Prasad was about to put Mr. Tyagi's amendment to vote Mr. Tyagi asked whether the deletion of the clause at present would mean actual levying of the salt duty.

Dr. Rajendra Prasad: "It opens the door for it, and in our present financial difficulties, I am not sure that it will not be taken advantage of."

Mr. K. Santhanam, Minister of State, said that as Dr. Ambedkar had pointed out, the provision as it stood would prevent duty being imposed on imported salt. Mr. Santhanam was explaining this point when some of the members cried, "no more speeches."

Dr. Rajendra Prasad said that if the members so desired, he would allow the Article to be held over for consideration.

Dr. Ambedkar agreed to the suggestion and the Article was accordingly held over.

Bharat 10-8

Wise Realism

Even in an age where political memories are getting shorter and the springs of sentiment are drying up, a common commodity like salt and an obscure village like Dandi bring back to our minds associations that thrill and achievements that exhilarate. Small wonder, therefore, that the slightest suggestion of the hateful impost on salt makes people bristle up in righteous indignation. To shut out all possibility of any future government reviving salt tax, the Drafting Committee of the Indian Constituent Assembly inserted a clause in the draft Bill imposing an omnibus ban on the imposition of any duty on salt. But, laudable as the motive of the Drafting Committee was, it was soon realised that the remedial ban provided in the Constitution Act itself might prove worse than the disease. Such a ban would prevent any government from imposing not only an excise duty on indigenous salt but also an import duty on foreign salt.

While the Constituent Assembly was considering the desirability of deleting the ten-word sub-clause that "no duties on salt shall be levied by the Union," Dr. Rajendra Prasad intervened and reminded the House of the Salt Satyagraha led by the Father of the Nation. The result was as could be expected. The members were in a quandary, torn between sentiment, albeit natural and praiseworthy, and a sense of realism. It was at this juncture that the Prime Minister, who has his ears closer to the heart-beats of the nation than many others in the country, explained the need for deleting the sub-clause from the Bill. His categorical assurance that neither "this Government nor any successor Government would think in terms of taxing salt", coupled with the lucid explanation of the way in which the contemplated blanket ban would needlessly tie us up when we want to deal with any anti-social salt monopolies, Indian or foreign, had the desired effect, and the House agreed to delete the sub-clause.

Bharat 12-8-49

HINDI TO BE UNION'S NATIONAL LANGUAGE

Congress Party Decision

USE OF ENGLISH FOR 15 YEARS

(From Our Staff Correspondent)

NEW DELHI, August 11.

THE Constituent Assembly Congress Party today entrusted to a Committee the question of what should be the language during the interregnum of 15 years, at the end of which Hindi with Devanagari script will replace English as the national language of India.

The Party during the discussions, accepted the principle that the Union's official language should be Hindi with Devanagari script, without prejudice, of course, to the name of the language. English will continue as additional State language for a limited period.

The Committee has been charged with assisting the Constitution Drafting Committee in framing an article in the light of the Party discussions, indicating the extent to which Hindi and English may be employed during the period of 15 years in all possible spheres of national activities.

The Committee consists, besides members of the Drafting Committee, of Pandit Pant, Maulana Azad, Babu Purshottamdas Tandon, Mr. K. Santhanam, Pandit Balakrishna Sharma, Seth Govind Das and Mr. G. S. Gupta.

Among those who took part in today's discussions were Pandit Nehru, Maulana Hifazur Rahman, Mr. Ananthasayanam Ayangar and Babu Purshottamdas Tandon.

The Prime Minister, who spoke for about 25 minutes, is stated to have said that Hindi alone had any future now in India. It was Maulana Hifazur Rahman who thought that Hindustani, as conceived by Gandhiji, should be the State language.

What the language should be called and what should be the period allowed for English are the points which have been left to be decided by the Committee whose final draft will be considered by the Party on August 21.

The next meeting of the Congress Party in the Constituent Assembly is to be held on August 18.

P.T.I. adds: Members from South India, Bengal, and Assam are reported to have been united in their demand that only English should be employed during the interim period but to have agreed to the sugestion that the parliament might be empowered to specify by a two-thirds majority that Hindi should be an additional language of the State during the period. They are totally opposed to the progressive substitution of English by Hindi.

The protagonists of Hindi, on the other hand, are reported to have asserted that the realisation of the objective of complete replacement of the English by Hindi at the end o 15 years was possible only by th progressive use of Hindi in the plac of English.

Language, Pandit Nehru is reported to have declared, could not b made to order but should evolve itself. Nor could it be imposed o unwiling people. There was, therefore, no question of imposition of th language on people of the non-Hind areas.

India Office S/ 12-8-49

ENGLISH TO BE STATE LANGUAGE FOR 15 YEARS

Formula To Be Evolved For Using Hindi Side By Side

C.A. PARTY DECISION

NEW DELHI, Aug. 11.

THE Congress Party of the Constituent Assembly, after a three-hour debate today, decided to refer to a committee the much-discussed language question during the interregnum of 15 years, at the end of which Hindi with Devanagari script will replace English as the national language of India, it is learnt.

The committee, it is stated, has been asked to evolve, together with the Drafting Committee, a formula in the light of the debate as to the extent to which Hindi and English may be employed during the interim period in all possible spheres of national activities, so that at the end of 15 years the national language will be purely Hindi.

SOUTHERN M.C.A.'S STAND

Members from South India, Bengal and Assam are reported to have been united in their demand that only English should be employed during the interim period, but to have agreed to the suggestion that the Parliament might be empowered to specify, by a two-third majority, that Hindi should be an additional language of the State during the period. They are totally opposed to the progressive substitution of English by Hindi.

The protagonists of Hindi, on the other hand, are reported to have asserted that the realisation of the objective of complete replacement of the English by Hindi at the end of 15 years was possible only by the progressive use of Hindi in the place of English.

The Committee, which includes Mr. K. Santanam, Dr. S. P. Mookerjee, Mr. Purshottamdas Tandon, Mr. Balakrishna Sharma, Mr. G. S. Gupta and Rajkumari Amrit Kaur, will discuss the matter with the Drafting Committee and frame an article in the light of the debate, making provision for the interim period.

Prominent leaders including Pandit Nehru, Dr. Mookerjee, Dr. Ambedkar and Mr. Ananthasayanam Ayyangar are said to have participated in the discussion.

Pandit Nehru is reported to have reminded the members of Mahatma Gandhi's views on the language question. He is stated to have suggested that the national language Hindi, should be defined as a language having "the style and form" of the Hindustani, commonly spoken and understood by the people of the country. It should not be exclusive in character and should be capable of assimilation of new ideas and expressions. Its doors and windows should be kept open for development. Language, Pandit Nehru is reported to have declared, could not be made to order but should evolve itself. Nor could it be imposed on unwilling people. There was, therefore, no question of imposition of the language on people of the non-Hindi areas.

The question is likely to come up before the Constituent Assembly, possibly next week.

SANYASINI BREAKS FAST

Shri Sharadhamata of Uttrakhand broke her 11-day old fast tonight following the decision of the Congress Party to adopt Hindi in Devnagari script as the official language of the Indian Union. The Sanyasini had been on fast unto death since August 1, demanding the adoption of Hindi as the national language and renaming the country as Bharatvarsh.

After breaking the fast, Shri Sharadhamata said that in the light of the conversations she had with Prime Minister, Pandit Jawaharlal Nehru, and other prominent members of the Congress Party she felt sure that her wish would be fulfilled.

Indian News Chronicle

WEDNESDAY, AUGUST 21, 1949

EMERGENCY POWERS

Nothing is so destructive of democracy as fear or distrust of the people—of the continuous pressure of a free public opinion on Government policies. This distrust is writ large in the Fundamental Rights clauses of the new Constitution which, as was pertinently pointed out at the recent Civil Liberties Conference, leave the citizen without protection against tyrannical laws—like the many now in force—whose validity from the point of view of the basic democratic freedoms the courts will have no right to test. Those who are interested in the preservation of the democratic civil liberties of our people have, now, however, to contend against a graver encroachment on the people's rights. It is not only that under the new Constitution Legislatures can pass undemocratic laws like the Public Security Acts now in force empowering the Executive to detain persons without trial for long periods. The President of the Union has been given emergency powers under which he can even suspend the right to move any court even for the enforcement of any of these fundamental rights which are guaranteed to the citizen in Chapter III of the Constitution. To the distrust of the people is added distrust of not only the Legislatures but also the Judiciary. It is hardly surprising that a rising note of alarm was struck in the Constituent Assembly during the debate on these emergency powers. The clauses as proposed were no doubt adopted by the House but nothing that either the sponsors or the supporters of these sweeping emergency powers said could be said to have answered the criticism of those who opposed these powers or to have allayed their fears.

So far as the need for vesting emergency powers in the Head of the State—and that means, the Union Government—is concerned, there can be no two opinions. There is need for adequate safeguards against and in an emergency—it may be due to war, civil strife or organised violence. Every democratic constitution provides for the exercise of special powers in such emergencies. Neither in the situation in which India is today can there be any valid objection to adequate powers being vested in the Centre to ensure not only peace and order in the whole country but also to enable it to plan the country's economic life rationally. The differences arise only in the fixing of the limits both to the emergency powers and to the Centre's right to intervene in the affairs of the units. The obvious test of the democratic propriety of the limits to emergency powers in all democratic constitutions is to ensure that in arming the Executive with extraordinary powers to deal with emergencies, particularly powers which involve encroachment on the citizen's basic rights, nothing is done to curtail the rights of the Legislature or the Judiciary. That is why the British Emergency Powers Act of 1920 laid down that any proclamation suspending any of the fundamental rights of the citizen should be laid before Parliament within five days of its issue and would cease to operate after the expiry of seven days after it was placed before Parliament unless the latter provided for its continuance. That is why under the U.S. Constitution, even though both the President and Congress have the right to suspend the writ of habeas corpus, the Supreme Court can set aside any orders or legislation if it feels that conditions justifying such suspensions do not exist. In misquoting the U.S. precedent, it obviously did not suit Dr. Ambedkar to mention the Supreme Court. Under the emergency powers adopted by the Constituent Assembly, the President's proclamation suspending any of the fundamental rights is, no doubt, to be placed before Parliament, but only "as soon as possible," which may mean anything from a week to six months. As for the courts, even the highest will have no right to find out whether the suspension of rights in any case is justified by the circumstances or is only a misuse of powers for partisan ends. As one of the critics pointed out, the Centre means not just the Central Executive, not even Central Parliament but these as well as the Central Judiciary. To arm the Central Executive with wide discretionary and arbitrary powers cutting at the root of civil liberties without the safeguards of judicial check which all democratic constitutions have, far from ensuring that there will be no abuse of powers, will only tend to encourage such abuse.

It can be safely assumed, as Dr. Ambedkar assured, that the President would be a reasonable man. It can also be assumed that the President would be always acting on the advice of the Central Cabinet and that the members of the Central Cabinet would be more than reasonable. But are we to assume that members of the Legislatures, provincial and Central, will not be reasonable and that there is, therefore, no necessity for obtaining immediate legislative approval for the exercise of powers cutting into even such basic rights as the people have been guaranteed under the new Constitution? Above all, are we to believe that the eminent jurists who will be members of our Supreme Court will not be reasonable men? The democratic way to decide the question of emergency powers is not to ask who will be reasonable and who unreasonable, but to ask how similar emergency powers have been used elsewhere and in this country in the past. Such a line of enquiry will at once reveal the danger of arming the Executive with such sweeping powers. The records of High Courts of the last two years are full of indictment of the way emergency powers have been grossly abused, often to stifle even the normal democratic means of protest and agitation. These judicial indictments have indeed been a challenge to the undemocratic use of undemocratic powers and the emergency powers (free of any judicial curb) in the new Constitution are perhaps a reply to that challenge. It is this which makes these powers all the more suspicious.

Hindustan Times 23-8

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PLANNED CHANGE-OVER OF STATE LANGUAGE

C.A. CONGRESS PARTY CONSIDER NEW ARTICLES

HINDI IN DEVANAGARI SCRIPT: 15-YEAR LEASE TO ENGLISH

USAGE OF INTERNATIONAL NUMERALS PROPOSED

(By Our Special Correspondent)

NEW DELHI, Monday.—The Law Minister, Dr Ambedkar, today explained to the members of the Congress C.A. Party a new set of articles on the official language of the Union as drawn up by the Drafting Committee. The Party postponed decision on the articles until tomorrow.

The articles incorporate the earlier decision of the Party that Hindi with Devanagari script shall be the State language of the Union and that English shall continue as the official language for 15 years after the commencement of the constitution.

The change-over will not be sudden or without planning. Provision has been made for special commissions to review the progress made by Hindi and make recommendations to the President. It will be the duty and responsibility of the State to ensure the development of Hindi without interference.

As for the numerals it is proposed to continue the usage of international numerals. This provision, however, has been bitterly criticized by representatives of the Hindi-speaking areas who also held a meeting today to consider the draft articles.

According to the draft articles, the President will have the power to order the use of Hindi along with English for any official purpose even during the 15 years when English will be the State language. The President will also have the power during that period to order the use of Devanagari numerals along with the international numerals and to restrict the use of the English language for any official purposes he may specify. After 15 years, Parliament will have the right to pass measures for the use of English for special purposes.

A separate chapter contains provisions laying down procedure for the change-over. The first provision enjoins on the President to appoint a commission, five years after the commencement of the Constitution, and again after another five years, to make recommendations about the progressive use of Hindi, restrictions on the use of English, legislation relating to the language to be used in the Supreme Court, High Courts and for Acts and Bills, choice of numerals and on other matters referred to it by the President. The commission will keep in view the industrial and scientific advancement of India and the interests of persons employed by the Centre or any of the units. The members of the commission will be representatives of different regional languages.

The recommendations of the commission will be studied by a 30-member committee of Parliament with 15 representatives from each House. The committee will report to the President whether all or any of the recommendations of the commission should be accepted.

Although this elaborate procedure has been laid down for the introduction of Hindi as the official language of the country, the position Hindi will occupy when adopted has not been left in doubt. Two new articles are proposed to be added to the Directive Principles of State Policy.

One declares it the duty of the Union to ensure the development of Hindi, and the other makes it the responsibility of the Union to promote the use of Devanagari throughout the territory of India. Hindi has been described as "the language in which all the elements of the composite culture of India find expression." It will be the duty of the Union "to secure its enrichment without interference, with its genius by the assimilation of the forms, style and expression used or current in Hindustani and in different regional languages of India and by drawing wherever necessary or desirable for its vocabulary, primarily on Sanskrit and secondarily on other languages."

Provisions regarding regional languages empower a unit to adopt a regional language or languages of Hindi as its official language. The legislature of each unit or State will have to pass a law before English is replaced. For purposes of intercourse between one State and another the official language of the Union will be used until the President orders otherwise. This means that for the next 15 years English may remain in use as the official language for intercourse between one State and another.

The President has also been given the power to direct a State to recognize as regional language any language other than the main language of the State if a substantial proportion of the population of a State uses it. An obvious interpretation is that

Continued on back page col. 5

Draft Articles On State Language

Continued from page 1 col. 1

if, for example, Muslims in the U.P. ask for recognition of Urdu as a regional language of that province the President will have the power to direct it to be used as the second regional language "for such purposes as he may prescribe."

As to the language to be used in the Supreme Court, High Courts and for Acts, Bills, Orders and Rules, it is to remain English until Parliament decides to make a change. No Bill or amendment seeking a change will, however, be allowed to be introduced without the President's previous sanction, and the President in his turn will not be in a position to give the sanction unless he is satisfied that the measure proposed is in accordance with the recommendations of the language commission which have been approved by the Parliamentary committee on language.

Hindi-Speaking Areas

Representatives of the Hindi-speaking areas, who held a meeting today, could not formulate any final conclusions. It was generally felt that the acceptance of Hindi by the authors of the new provisions was not without reservations.

Special objection appears to have been taken to the proposal that international numerals should remain in use.

The provision regarding recognition of a language spoken by "a substantial proportion of the population" as a second regional language was also criticized on the ground that this was an attempt to bring in Urdu by the backdoor. The provision, it was felt, constituted an encroachment by the Centre on the provincial sphere, an objection which, according to some members, also applies to the provision declaring English as the language for intercourse between one State and another.

The critics contended that it was unreasonable to expect Hindi-speaking provinces like the U.P., the C.P., Bihar, Madhyabharat and Rajasthan to use English language when they had already accepted Hindi as the official language. It would be reasonable for the U.P. Government to deal in English with the Government of Madras, but Hindi-speaking provinces should have full liberty without any interference from the Centre to use the language common to both.

Hindustan Standard 23.8.49. 45

NATIONAL LANGUAGE DRAFT FORMULATED

HINDI WITH NAGARI AS SCRIPT

CHANCES OF ACCEPTANCE IN CONSEMBLY

NEW DELHI. AUG. 22.—The Drafting Committee of the Constituent Assembly has formulated a compromise draft on the question of official language of the Union, which tonight found among Congress Party members a fair chance of acceptance.

The Congress Assembly Party had before it the draft Article incorporating the earlier decision that Hindi with Devanagari as its script shall be the official language of the Union.

The Article has an important proviso that for a period of 15 years from the commencement of the new Constitution the English language shall continue to be used for all official purposes of the Union.

One of the unresolved points is whether international or Arabic numerals or Sanskrit numerals shall be used. It is expected that this and any other points will be decided at tomorrow's party meeting.

The compromise Article also suggests that during the period of interregnum, the President by an order may make provision for the use of Hindi with English for any official purposes. After 15 years, the Parliament, according to the Article, would be entitled to provide for the use of English for specified special purposes.

The procedure for change in the language as detailed in the Article suggests the appointment of a Commission with members representing the different regional languages to make recommendations as to the progressive use of Hindi for official purposes, the restrictions on the use of English and the choice of numerals to be used for any one or more purposes of the Union.

The Commission, which would be appointed five years after the commencement of the Constitution, will be asked to take into consideration the industrial and scientific advancement of India and the interests of persons holding office in connection with the affairs of the Govt. of India.

The proposal envisages the constitution of a Committee consisting of 30 members, including 15 members of each House of Parliament to examine the recommendations of the Commission and to report to the President their opinion on the recommendations.

REGIONAL LANGUAGE

On the question of regional languages, it is proposed that a State may by law adopt any regional language or languages or the Hindi language as the languages to be used within the State for all or any of the official purposes of that State. A proviso attached to the proposal, however, states that English shall continue to be used for official purposes until the legislature of the State otherwise provides.

The official language of the Union shall be the official language for intercourse between one State and another State and between a State and the Union.

It is also proposed that all the proceedings in the Supreme Court and in every High Court, the authoritative texts of all Bills, amendments, motions or resolutions to be moved in Houses of Parliament and legislatures and of Acts of Parliament and legislatures, Ordinances and of all orders, rules, regulations and byelaws issued under the Constitution shall be in the English language.

The Drafting Committee has also suggested an addition of a new Article in the Directive Principles, stating that it shall be the duty of Union to ensure the development of Hindi which is the "language in which all the elements of the composite culture of India find expression and to secure its enrichment without interference with its genius by the assimilation of the forms, style and expressions used or current in Hindustani and in different regional languages of India and by drawing wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

It shall also be the duty of the Union to promote the use of the Devanagri script throughout the territory of India.

It is understood that at today's Party meeting, which was presided over by Mr. K. M. Munshi, Dr Ambedkar, Chairman of the Drafting Committee, explained the provisions of the new proposals, which will be discussed by the Party tomorrow.—P.T.I.

Hindustan Standard 21-8-49.

THE SECOND CHAMBER

A COMPROMISE formula has been adopted by the Constituent Assembly on the question of the composition of the Second Chamber in those provinces for which such a Chamber has been provided for by the Constitution. The formula, although it shows the defects of a compromise, has not been entirely unsatisfactory. Obviously the Drafting Committee had to consider an appallingly large number of divergent and contradictory views and it was not possible to satisfy everybody. The composition according to the formula adopted by the Assembly is as follows: The total number of members of the Second Chamber shall not exceed one-fourth of the total membership of the Assembly. It is provided that in no case shall the number be less than 40. Of this number, one-third is to be elected by local authorities like Municipalities and District Boards, one-third by the members of the Legislative Assembly from among non-members, one-twelfth by graduates, one-twelfth by teachers and the rest is to be nominated by the Governor. The nominated members must be persons having special knowledge or practical experience in respect of such matters as the following: Literature, Science, Art, Co-operative Movement and Social Service.

Objections may be raised by some to this formula. In fact such objections have been raised. But the difficulties faced by the Drafting Committee in the matter should not be forgotten. Moreover, Parliament has been empowered to change the composition in future. Should the formula be found defective in practice, it will not be difficult to alter it.

The Second Chamber in the new set-up is to be chiefly a revisory body. From this it follows that it should be composed of experienced and well-qualified persons. It is most necessary, therefore, that some minimum qualifications should be laid down for the candidates for the Second Chambers in provinces. It may be hoped that the Central Legislature will see to it that proper rules are framed regarding this matter. Property qualifications, being incompatible with the spirit of the new set-up should be avoided.

One of the salutary functions of a Second Chamber is to prevent hasty legislation. This is, however, exactly where a source of danger to democracy lies. A Second Chamber may be used by the executive to delay legislation for their own purposes. The provisions in our new Constitution are such that no legislation can be delayed for an indefinite time. But within the maximum limits set by the Constitution in this respect, the executive will be perfectly free to choose their time of summoning the Second Chamber. If they find it to their interest to delay any legislation they will be able to do so for an unconscionably long time. Suitable constitutional conventions should be developed to avoid this difficulty which may in certain circumstances result in practically the thwarting of the will of the Legislature.

The executive's power of nomination, again, should not be abused to bring into the Cabinet unpopular elements who have no chance of being elected to any of the Chambers in the Legislature either directly or indirectly. Under the provisions of the Constitution, it would be perfectly legal for the executive to take into the Cabinet absolutely undesirable people by first nominating them to the Second Chamber. This loop-hole, too, as we have already stressed in these columns, should be completely sealed up by suitable conventions.

THE STATESMAN

DELHI, AUGUST 23, 1949

FUNDAMENTAL RIGHTS

INDIA'S Constituent Assembly has latterly been engaged in a brisk process of tidying up, perhaps rather too brisk. Controversial articles, whose consideration was earlier postponed but which have now been disposed of, with or without alteration, include the composition of Upper Houses in the States, the President's emergency power to control financial grants to States from the Centre, and his power, also in emergency, to suspend constitutional guarantees. The last, in particular, is of patent public importance. When first debated, the suggestion that the President should be entitled, by simple executive order, to prevent access to the courts for redress, where fundamental rights were violated, naturally aroused strong opposition. Nor is it reassuring that, when debate was later resumed on a matter of such public gravity, it was thought necessary to terminate it by applying the closure.

Mere executive action, in such a sphere, has appeared to critics both anomalous in itself and in sharp contrast to practice elsewhere. Certainly the power to suspend habeas corpus belongs, in Britain, to Parliament alone, while other actior under the Emergency Powers Act, 1921, requires Parliamentary scrutiny within five days. Dr Ambedkar declared that India had "more or less" followed U.S. precedents. Here, however, he perhaps was studiously vague. While some confusion exists, based on action taken by President Lincoln during the Civil War, legal opinion there apparently favours Chief Justice Taney's decision, made at the time, that Congress has the exclusive power to suspend habeas corpus, at least in areas not directly subject to martial law; even there the courts can and do attempt to assert their control, as was shown by wartime litigation in Hawaii. The Judiciary in the parts of Continental Europe where freedom still remains is similarly tenacious of citizens' rights.

The version of the Article now adopted empowers the President to restrict the scope of his order to special areas, when it is not required to make it of general application, a welcome amendment, entirely unexceptionable. It also provides that the order shall be laid before both Houses of Parliament "as soon as may be". However, without a time limit, such a saving clause may represent little more than a pious hope—a thing to which Executives are not uniformly susceptible. Attempts to add a time limit were resisted. An equally important point seems to have been overlooked in debate: that the courts might seek to give this clause a constructive interpretation. A strong judge might well choose to inquire, in a case before him, whether the relevant orders had, in fact, been laid before Parliament without undue delay, and, if not, whether the applicant's rights had thereby been prejudiced. This may seem safeguard, as in a way it is. But the fundamental law of the land should be clear, not dependent on judicial remedy for the deficiencies of drafting. Moreover, the dilemma remains: if this Article is necessary, legal interference with it is against the interests of the State; but, if it is not, it should never be enacted.

On the question whether the Article is in fact necessary—as opposed to consonant with democratic theory —both debates seemed meagre. It is true that recent events in India, as in Asia as a whole, have seemed to require extensive assumption of special powers. Yet those were initially represented as essentially temporary, not a part of permanent fundamental law. Our impression, which may be incorrect, is that law and order have latterly (a few restricted areas excepted) much improved, and that some of these powers are today an administrative convenience rather than a necessity. It may be that Authority, nevertheless, requires reserves of power. It might be thought that they might more properly be acquired by, for example, redrafting India's chaotic law of sedition, or amending the Evidence Act, than by seeking—albeit only in emergency—to sweep aside altogether the safeguard of the Judiciary; while, even if the Judiciary apparently cannot be trusted, democracy seems to become something of a farce if trust cannot be reposed in the Legislature.

Meanwhile much of the discussion appears somewhat airy. It seems of little use to stress the fact that the President would normally act upon the advice of the Ministry and Legislature, when abnormal situations are precisely those for which provision is made. It is of even less use to repeat again and again that we can trust the Government as Pandit Thakur Das Bhargava pertinently pointed out; that may be true of the present Government, but who knows what may in time replace it? A Communist régime would doubtless in any case sweep constitutional guarantees, with all other manifestations of effete liberalism, into the dustbin. Yet a régime far short of Communism might contain members who had themselves suffered extra-legal disabilities—often and perhaps understandably the most efficient persecutors—or be in other ways tempted to use provisions conveniently on the Statute Book to prolong its unwelcome power. Experience is that special powers, once granted, are used, to the limit or even beyond it. Tyranny, like freedom, broadens down from precedent to precedent.

Hindustan Times 21-8-49.

MORE EMERGENCY POWERS FOR THE PRESIDENT

(By Our Special Correspondent)

NEW DELHI, Saturday.—The habitual opponents of the Drafting Committee's proposals fought another battle in the Constituent Assembly today during discussion on an Article providing for suspension of fundamental rights when a proclamation of emergency is in force.

There were over a dozen amendments pressed by their sponsors with vigour and vim, but the House accepted none of them and the article as proposed by Dr Ambedkar was adopted.

The article empowers the President to suspend the right to move any court for a writ of habeas corpus during a period of emergency. Orders under the provision may apply to any area and are to be placed before both Houses of Parliament.

The critics' objection was that the provision was too drastic and would take away civil liberties altogether. Examples of other constitutions were quoted to prove that India was being led towards autocracy and reaction.

Dr Ambedkar did not find it difficult to dispose of the criticism in a simple and effective manner. Few would deny that in a period of emergency suspension of rights was necessary. As to the writ of habeas corpus, it was not open to the executive to suspend it in Britain. In the U.S.A., Congress had the right to suspend constitutional guarantees, but the President was not left without any power to deal with the matter.

The President also had *ad interim* power to suspend fundamental rights. The provision suggested by the Drafting Committee was exactly the same as in America. The one difference was that, unlike in the U.S.A., in India the President would be guided by the executive which in its turn was guided by Parliament.

Earlier, the House adopted the article empowering the President to alter arrangements regarding the distribution of revenues between the units and the Centre during a period of emergency. The debate on the provision, which began yesterday, continued today when several speakers supported Pandit H. N. Kunzru's proposal outlining the procedure the President should adopt in altering allocations in respect of income-tax.

Dr Ambedkar's reply was straightforward. The House, he felt, should not tie down the President, who might, in consultation with the Finance Commission, find a better method than suggested to suit the circumstances. It would be best to leave the provision as elastic as possible.

Detailed report on page 6

Amrita Bazar Patrika
13-8-49

CITIZENSHIP

NO OTHER ARTICLES IN THE Draft Constitution had given such a headache to the Drafting Committee as those on Citizenship, said Dr. Ambedkar the other day in the Constituent Assembly. The original Articles 5 and 6 were unceremoniously buried and Dr. Ambedkar was the high priest in the burial ceremony; for he moved altogether new Articles in complete supersession of the original ones. But even these did not satisfy the critics who said that the other Articles also should go the way of the old ones. There was a jungle of amendments which served only to make confusion worse confounded. Yet why was this fuss? Dr. Ambedkar took considerable pains to point out that the Articles on Citizenship now being propcsed were not at all to be permanent laws but they would be valid only at the commencement of the operation of the Constitution. Parliament would have the right to change the Articles lock, stock and barrel, if it so desired. The new Constitution could not be worked if there were no citizens validly recognised by law. Who would vote for members of the legislature? The citizens. Dr. Ambedkar, therefore, contended that members should be satisfied if there was nothing *prima facie* wrong in the Articles he was proposing. But this plea, plausible though it was, did not pass muster with the members, one of whom pointed cut that Parliament would find it very difficult to deprive a person of his citizenship if the Constituent Assembly "in its foolishness" had conferred citizenship on persons who should not have been given the privilege. So the debate went on with vigour, and at the time of writing we do not know the upshot.

But a way out of the jungle may be found. There is no difficulty in regard to the bulk of the population. A person born in the territory of India *and* domiciled here would be a citizen. We leave aside the details. But India of to-day is not the India of the day before partition. Pakistan is a foreign territory. Citizens of Pakistan, therefore, are foreigners. But then certain persons who were Pakistan citizens, but who have come to India—the "refugees" as we call them,—are they to be recognised as citizens of India? Yes, but under certain very easy conditions. First, the person (or his parents) must have been born in the India as it was before partition. If he had migrated to India before July 19, 1948, he becomes automatically a citizen of India. But many persons came from Pakistan *after* that date. What will happen to such a person? He will be a citizen provided he has taken the trouble of getting himself registered by an officer appointed for the purpose. No such registration will be made unless the applicant has resided in the territory of India for at least six months before the date of his application. Some of the critics said that this Article was unnecessarily harsh to the refugees; others again said that the Article would throw the flood gates open to all sorts of undesirable people. Not only Hindus and Sikhs but many Muslims will fall into the category. One view is that many such Muslims had come or were coming to India with a view to organising a fifth column. Another view is that we should not be harsh to these people and condemn them unheard and without proof. Perhaps disillusionment or economic distress or both are responsible for the return of the prodigals. Dr. Ambedkar's Article strikes a middle course. The registering officer would make an enquiry in each case. In many cases, the registration will be done without much ado. In cases where suspicion is natural an enquiry will be made, and if suspicion is confirmed registration will be refused. As a proof of good faith six months' stay in India will be insisted upon. But this insistence on six months' stay was objected to by certain members, one of whom wanted that this condition should be dispensed with in the case of Hindus and Sikhs. These critics forget that India is a secular State. It cannot make a discriminatory law.

Then, again, there are persons who had migrated from India to Pakistan after March 1, 1947, but who wish to return to the territory of India. Citizenship will not ordinarily be granted to them. But certain exceptions have been made. If such a person has been permitted by law or under the authority of any law to return to the territory of India "with a view to taking up his fixed habitation in that territory," he will be deemed to have migrated to the territory of India *after* July 19, 1948. That is, he will have to apply to the registering officer and must have lived for six months before the date of his application. This Article was criticised by some members as dangerously lenient. The view was expressed that the person in question had made his choice of Pakistan deliberately, and he should not be permitted to become an Indian citizen simply because he had changed his mood accidentally or for a certain motive. At best, he should be considered a foreigner, and the conditions imposed in the case of foreigners who wish to acquire Indian citizenship should be applicable to him. In other words, the matter should be left to Parliamentary legislation. Prof. Shah insisted that such a person should produce documentary evidence to prove that he wished to be domiciled and reside permanently in India. There is considerable force in these objections.

Dr. Ambedkar's Articles are silent as to the claim of persons to be Indian citizens in whose country Indians are denied citizenship. Australia, South Africa and the U.S.A. are among such countries. It was proposed that India should retaliate by refusing citizenship to such persons. There was considerable feeling in the House, and naturally so. Perhaps it will be said that applications from such persons will be too few to deserve legislative action. There may be some such persons who have already made India their home, and who had not the least sympathy for the policy adopted by the Governments of the countries in which they were born. There are missionaries of foreign nationality who have been doing useful work in India. Should they be punished simply because they happen to be Australians, Americans or even South Africans? This would be like, as the saying goes, 'beating the maidservant to teach the wife.' Every case should be considered on its merits. Is it not better to leave applications, if any, from such persons to the registering authority?

The Hindustan Times

SATURDAY, AUGUST 13, 1949.

DISTRIBUTION OF REVENUES

During the last ten days the Constituent Assembly disposed of the difficult and complicated question of distribution of revenues between the Centre and the units of the Federation. How complicated the question is can be seen from the fact that though an Expert Committee appointed by the President went into the whole question and reported by the end of 1947, the Drafting Committee did not incorporate in the Draft constitution its recommendations regarding distribution of revenues between the Centre and the States, as the Committee was of the opinion that, in view of the unstable conditions prevailing at present, the existing distribution of such revenues under the Act of 1935 should continue for five years, after which a Finance Commission was to be appointed to review the whole position. The Constituent Assembly itself was forced to modify the scheme in certain essential respects. It was the Act of 1919 which, for the first time, allocated different sources of revenue to the provinces and the Centre but this left the Centre with such depleted resources that provinces had to make contributions to the Centre to keep it solvent under what was known as the Meston Award. But when provincial finances began to deteriorate, the Centre had to progressively reduce the burden of these contributions until they were abolished altogether in 1929. Though the Act of 1935 allocated different sources of revenue to the provinces and the Centre, provincial finances proved so inadequate to meet provincial responsibilities in developing social services that under the Niemeyer Award the Centre had to go to the relief of provinces by way of subventions and allocation of shares of certain Central sources of revenue like the income-tax.

Two of the major changes made by the Constituent Assembly in the Draft constitution were the deletion of the provision banning imposition of duties on salt and abandonment of the scheme of distribution of the export duty on jute among the jute-growing provinces. We have already pointed out how if the Assembly was so minded it could have redrafted the Article banning salt duty in such a way as to leave the Government free to impose import duties if necessary and retain such control over the industry as might be essential in the interests of the consumer. But this was not, unfortunately, done. As regards dividing the proceeds of the jute duty, the substitute Article 273 by Dr Ambedkar provides for grants-in-aid to the four States of Bengal, Assam, Bihar and Orissa, in lieu of their share of the jute export duty, for ten years. As export duties were a lucrative source of revenue, it was argued that to make an exception in the case of jute would result in similar claims being presented by other provinces, and, consequently, the procedure was objectionable on principle. The present practice had its origin in old undivided Bengal's grievance over the perennial financial troubles of the province because of the permanent settlement on the one hand and the entire tax on jute being appropriated by the Centre as the central source of revenue. Partition has changed the position of Bengal a great deal, but the financial prospects before the province are none too bright.

As regards the allocation of income-tax proceeds between the Union and States, the Expert Committee had devised a scheme by which 60 per cent of the divisible pool would be distributed among the provinces, in the proportion of 20 per cent on the basis of population, 35 per cent on the basis of collection and 5 per cent as a balancing factor to remedy patent injustice. The Article, as finally adopted, does not fix either the share of the provinces or the manner of its distribution. It merely says that the percentage to be distributed will be prescribed by the President by order until a fresh basis is decided on the recommendation of the Finance Commission. Though several reasons were given why the Expert Committee's recommendations were not accepted, the real reason was, undoubtedly, the uncertainty in the financial position of the Centre. At such a time, the Centre did not want to be bound by rigid provisions in the constitution. The agreement of the provinces made inevitable what, in any case, was bound to happen. The Finance Commission is to be appointed within two years of the commencement of the constitution and, thereafter, at the expiration of every fifth year to review the whole question of the distribution of the proceeds of taxes between the Union and States, the principles which would govern grants-in-aid to the States and other allied questions. Though the provinces may feel that the resulting situation so far as their financial position under the new constitution is concerned is left uncertain, the final scheme retains an elasticity which will make it easy to adjust it to the changing picture of our financial situation. The provinces too may, ultimately, stand to gain by refusal to fix the pattern of distribution of revenues at a time of acute financial stringency.

Indian news chronicle 19.8.49

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FRESH POWERS FOR GOVERNOR-GENERAL

Right To Order Elections In Provinces

(By Our Special Correspondent)

NEW DELHI, Thursday.—After a hard-fought, four-hour debate the Constituent Assembly today passed Mr. Gopalaswami Ayyangar's Bill giving powers to the Governor-General to order a general election in any Province and also to change the composition of the Provincial Legislature and the franchise. The Bill also gives him power to enact all-India legislation dealing with the custody, management and disposal of evacuee property.

Mr. H. V. Kamath, Prof. K. T. Shah, Mr. Pocker Saheb and other habitual "opposition" members made three or four speeches apiece and put up legislative road-blocks—points of order, amendments, objections, hard words, describing the Bill as a constitutional monstrosity, a constitutional absurdity, an interim constitution thrust on the House in advance of the new constitution, an autocratic measure which would make the Governor-General a Czar. The power given to the Governor-General to alter the composition of the Provincial Legislature was attacked with particular vigour.

Mr. Ayyangar explaining the plain and simple object of the Bill said that if before the new constitution came into force a situation should develop in one or more Provinces, for which the appropriate remedy was a general election, the Governor-General should be in a position to apply that remedy. The motive for dissolution of a Provincial Legislature could only be to replace it by a more democratic legislature. He made illustrative mention of West Bengal, but made it clear that no decision had been taken to hold election there or elsewhere.

"SLIP" REMEDIED

Even this cautious and conditional reference to West Bengal caused a misunderstanding and was later admitted to be one of two "slips" which, Dr. Ambedkar said, had been committed by Government. Criticism made on other counts dissolved before Dr. Ambedkar's massive power of exposition. The new provision about elections, he said, was substantially the same as existed in the Government of India Act now. The matters over which power was sought to be given to the Governor-General were, with one exception, all matters over which the original Act gave power to His Majesty-in-Council. That power ought to have been transferred to the Governor-General, who stepped into the shoes of His Majesty-in-Council; but unfortunately owing to a slip, that power was given to the Provincial Legislature. That slip was being corrected now, and there was no deep-laid game to upset the constitution or any political motive.

The only change now being made was to give to the Governor-General to alter the composition of the Provincial Legislature. That was to provide for the situation arising from the shift of population following partition. There was no nefarious purpose behind the power given in this respect.

After listening unmoved to Mr. Kamath's last point or order for the day and Prof. Shah's repetition for the sixth time of the phrase "intellectual dishonesty", the House passed the Bill.

Agency Report On Page 4.

Statesman 18.8.

DR. PRASAD NOT TO PRESIDE AT TODAY'S SESSION

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Wednesday.—Before resuming its normal business, the Constituent Assembly, which meets tomorrow afternoon after a five-day-recess, will deal with a Bill to amend the Government of India Act, 1935.

Intended to serve the dual purpose of centralizing legislation governing evacuees and providing for an interim general election under a joint electorate, the proposal is likely to be introduced by Mr N. Gopalaswami Ayyangar.

Other immediate business before the House will probably be settled at a meeting of the Congress Party tomorrow morning. A meeting was fixed for this afternoon, but had to be cancelled for want of sufficient notice.

Draft Articles on the questions of compensation for property acquired by the Government and the national language still remain to be finalized. They will provide the main interest at the next few meetings of the Assembly.

When the House reassembles tomorrow, the President, Dr Rajendra Prasad, will not be in the chair as he is not expected to return from Pilani, where he went this week for reasons of health, until Sunday.

Most members, taking advantage of the recess, are also away from Delhi, and tomorrow's afternoon session has been arranged primarily to suit their convenience.

CONSAMBLY DEBATES BILL TO AMEND 1935 ACT

MR. N. G. AYYANGAR'S REPLY TO CRITICISM

(Continued from page 1)

elections under this Act and the method of voting.

The Bill relating to vesting of power in the Governor-General to regulate general elections in any province was severely criticised among others by Dr. Deshmukh, Prof. K. T. Shah, Mr. H. V. Kamath, Mr. B. Poker Sahib Bahadur and some of them characterised it as constitutional monstrosity, and a retrograde and autocratic measure.

Members used epithets like 'constitutional absurdity', 'mental dishonesty' and 'moral inequity' in charging the Government for bringing the measure. They complained of alleged 'scant courtesy' which men in power showed to Assembly.

Mr. Gopalaswami Ayyangar in defence of the provisions pointed to their transitional character and said that there was nothing in them which could justify their being characterised as a constitutional monstrosity.

Provisions were made to deal with a state of things that might emerge and which might justify a dissolution of the existing provincial legislatures.

Dr. B. R. Ambedkar resented strongly the suggestion that there was 'a political motive' and a 'deep laid scheme' behind the provisions. He stated that instead of His Majesty in Council, as in the original section the Governor-General would be invested with the power.

It corrected a 'slip' that occurred in adapting the Government of India Act, when a general provision was made applicable particularly to West Bengal alone. The power to alter the composition of legislature was given to Governor-General in view of the shifting of population following partition, he said.

The House rejected Mr. Poker Sahib's motion to refer it to Select Committee while a similar motion by Dr. Deshmukh was withdrawn by him. The House however accepted an amendment by Dr. Deshmukh stating that orders of the Governor-General under this section should be placed before the Dominion Parliament as early as possible.

The House passed all the three readings of the Bill today, before it adjourned till to-morrow.

THE PROCEEDINGS

The Constituent Assembly of India today took up Mr. N. Gopalaswamy Ayyangar's Bill to enable the Government of India to apply a uniform evacuee property law throughout the country and to empower the Governor-General to issue orders for regulating any general elections in a province before the new constitution comes into force on January 26, 1950.

The Bill after a full debate was passed by the House.

[illegible] apply to the registering officer and enacted as its legislation in regard to the Evacuee Property Act at the Union level. Members must have noticed, Mr. Ayyangar added, that Pakistan had been issuing Ordinances and orders in fairly regular succession during the last few weeks. It was necessary that our authority like the Dominion Government here should be in a position to deal with a situation created by such legislation "on the other side" promptitude, with the assurance that that legislation would be implemented throughout India. The present multiplicity of laws in this country for dealing with a subject which required uniformity of legislation was inconvenient.

The Government of India, however, recognised that in regard to certain details of the administration of evacuee properties, it was desirable that Governments and States should have the discretion to enact legislation or issue orders which would supplement or fill the lacuna in the legislation enacted by the Centre. So it had been decided that this power to legislate be vested in the custody, management and disposal of evacuee property should be a subject for legislation in the concurrent list.

The Bill would also enable the Centre to exercise executive power in regard to the implementation of schemes of relief and rehabilitation in various provinces, which were really financed from the Centre.

GENERAL ELECTION

Referring to the second part of the Bill relating to election, Mr. Ayyangar said, "I wish to make it clear at this stage that the introduction of this bill does not mean the announcement of any decision as regards the holding of general elections in any province. But it is quite possible that such a decision might be taken, might in fact be forced on those who are responsible for looking after these things, between now and say, Jan. 26, 1950.

If such a contingency should arise, we shall be in a position to make the necessary amendments in the existing rules and regulations even in the provisions of the Government of India Act itself, so that we might bring these elections also in harmony with the state of things that exist today.

"For instance, if for disturbances, it is felt to hold general elections in West Bengal or East Punjab, it would be impossible for us to ignore the claims of people who have migrated from West Pakistan to the East Punjab or from East Bengal to West Bengal for being included in the electoral rolls. It may also be necessary for us to carry out modifications in the delimitation of constituencies. It would not be right for us, after all the decisions we have taken on the draft constitution, to hold general elections even under the Government of India Act, 1935 on the basis of separate electorates.

"I wish to warn, the members that what is said in the statement of objects and reasons about joint elections with reservation of seats has only been said by way of illustration. A greater liberality in that every attempt will be made to give effect to the decision which has been taken by this Constituent Assembly as regards the new constitution."

Maulana Hasrat Mohani (U.P.) raised his solitary voice against leave to introduce the Bill.

'TOO MUCH POWERS FOR GOVERNOR-GENERAL'

Dr. P. S. Deshmukh, moving an amendment for the reference of the Bill to a Select Committee to report by Aug. 22, severely criticised the provisions relating to the powers of the Governor-General to amend certain provisions of Section 291 of the Government of India Act (Provincial legislature). He said that the Bill took the House by surprise and it would give an extensive and unheard of powers to the Governor-General. If the Bill was passed, the Governor-General would have the power to alter the composition of any of the existing Houses of Legislature without reference to Parliament. Where was the crisis or emergency for investing such wide powers in the hands of the Governor-General? He asked. He said that already the dignity of the Constituent Assembly had suffered and there was a feeling that the House was being treated with contempt. The intentions of the Bill were not clarified. In his opinion, this measure was brought forward because the Government was being carried on in the most arbitrary fashion.

Dr. Deshmukh also criticised as an illustration the nomination of members to the Bombay Legislature to represent Baroda and Kolhapur. Not even a show of democracy was made in the nomination of these members. It was undesirable to leave the whole power in the hands of the Governor-General and the country was not faced with any crisis.

NO REFERENCE TO SELECT COMMITTEE

Mr. B. Poker Sahib Bahadur wanted to move an amendment seeking to circulate the Bill for public opinion but the chair ruled the amendment for reference to a Select Committee. He was surprised that the Government should have take the course of sprinting upon the House a Bill which practically provided for an "interim constitution." He characterised the Bill as an "uncalled for and an autocratic measure," and felt that there was no justification for bringing in a Bill at such a short notice. He also referred to the amendment to Section 291 of the Government of India Act and said that it was necessary that the Government must put down the Communist trouble in West Bengal with "an iron hand." But there was no need to bring in a measure like this to deal with the situation in West Bengal and quoted a Malayalam proverb stating "If one should you burn a house to destroy a rat."

KAMATH'S OPPOSITION

Opposing the Bill in respect of the amendment in Section 21 Mr. H. V. Kamath called it "a constitutional monstrosity" and complained that "this sovereign body is being trifled with and treated with scant courtesy by those in power." He said that he would move that all his powers the provisions of the Bill which struck a "retrograde note, even as compared with the Government of India Act 1935 which was condemned on all hands." The provisions would deprive the provincial legislature of all rights in regard to legislature, composition, delimitation of constituency etc., and also give over the Constituent Parliament of its powers. They were thus going a hundred steps backward. From the first to the last a hypothetical and casual case was laid before the House. To legislate the Bill was a direct insult to the dignity of the sovereign House. Men in power appeared to seek the House to convert it as a legislature machine to suit their convenience, but a few days ago, an Ordinance, which was about to lapse was renewed without reference to the House as it was not sitting then. "I do not want this House to be made a thing to be mocked at. The men in power have made a mockery of it. They are callous and imperious to our protest" he said and urged the House to lodge a protest against the manner in which this Bill was brought before it. He hoped that consideration of party would not influence them and the House would act in the spirit which it stood for the nation as a whole.

Kazi Syed Karimuddin also dealt with the provisions relating to Section 291 of the Government of India Act. He said that everything in the Bill was vague and the House did not know for what purpose it was being enacted. The movers had not stated at all why there was need for holding election in West Bengal. If it was to test the popular opinion whether they had faith in the Government or its economic policy, election on the basis of adult franchise should be conducted. The Bill gave absolute powers to the Governor-General and even the emergency powers that were given to the President were nothing as compared with these.

'CRITICISM UNWARRANTED'

Mr. Biswanath Das (Orissa) supporting the Bill, said that there was no Justification for the criticisms made against it. He However, felt that there was no need for holding a general election in West Bengal as a defeat in one by-election could not serve as an indication that the Congress had lost support there. Mr. Nazimuddin Ahmed (West Bengal) opposing the clauses in the Bill relating to general elections, said that no case had been made out for vesting the Governor-General with "such tremendous powers when there is no emergency." He supported the clauses relating to evacuee property.

At this stage a motion for closure was moved and carried.

MR. N. G. AYYANGAR'S REPLY

Mr. Gopalaswami Ayyangar said that the clause in Bill relating to general election provided for a state of things which might emerge and which might justify a dissolution of the existing provincial legislature and the ordering of fresh elections. Mr. Ayyangar said that in the case of West Bengal, referred to by many members, one particular circumstance which perhaps, more than any other, might justify a dissolution of that provincial legislature was that "that legislature is not functioning in an honest democratic way. That is the only kind of thing that might be said by those in favour of fresh elections."

Mr. Ayyangar said that he might state that that democratic legislature had broken its integrity among each other and the administration of the province had been threatened by the fact that it was not functioning in the proper democratic way. The motive for dissolution could only be that in the place of a legislature which was not functioning in a democratic way, "we want to get together a legislature which will be more democratic and that the only way such a new legislature may be constituted is to go to the electorate."

The sections had undergone several changes since the Government of India Act of 1935 (adapted) had come into operation. If general elections were to be held, it was necessary to make certain changes in important matters connected with holding elections. Mr. Ayyangar pointed out that the composition of the legislatures had been changed.

As regards the opposition voiced by some members against the vesting of power in the Governor-General, Mr. Ayyangar said that this was not a new thing under the Government of India Act. The Governor-General had to act on the advice of somebody. It was here that the powers were wielded on the advice of the Central Government than to allow the chopping and changing of the authorities to be made on the advice of provincial ministries and legislatures that had got to be dissolved.

If elections were to be held, there would be no time to come to the Constituent Assembly to pass the necessary amendments, because if the Assembly kept to its schedule it would cease to function as a constituion-making body within the next fortnight and would be meeting again for the third reading only in October or in January.

There was nothing in the provisions which could justify their being characterised as a "unconstitutional monstrosity, the language which my honble. friend Mr. Kamath has chosen to indulges in."

Replying to the criticism that persons had been nominated to the Bombay legislature and the same might be done in other provinces, Mr. Ayyangar said: "If you do not have confidence in your own Governments then it is up to you to see that they do not adopt methods which might not be acceptable to you."

Mr. Ayyangar agreed with the view that whatever the circumstances the powers given to the Governor-General should be placed before the Central Legislature. He was willing to move Dr. Deshmukh's amendment in this regard if it was suitably changed.

During clause-by-clause consideration of the Bill, Prof. Shibban Lal Saksena said that the refugee problem was the "most explosive problem before us." Now that the Centre would have the necessary powers to deal with the question, he hoped that the Government of India would tackle it on a planned basis and no provincial Government would stand in the way.

Mr. Mahavir Tyagi said that it was the Hindu that mostly suffered of the people of this country to make good the losses sustained by refugees who were forced to leave their property in Pakistan. Government were liable to make good these losses if not to the tunes of Rs. 5 crores, at least an extent of fifty per cent.

Mr. Tyagi said that while India was paying the rent on evacuee property left behind in India, Pakistan did not reciprocate. Pakistan was not allowed to do anything. Even the Indian Flag could be pulled down "because we are always international gentlemen". Mr. Tyagi added: "We do not want to be international gentlemen. We will be better off as ordinary men at home."

SECOND READING OF CLAUSE 4

The second reading of clause 4 of the Bill (amending Section 291 of the Government of India Act provincial legislature) again produced prolonged debate.

Syed Karimuddin moved an amendment to the effect that the Governor-General's orders in regard to changing the legislature should be subject to confirmation by the Parliament within two months of the date of issue of the orders. He pointed out that the Section as it stood did not lay down provisions against the abuse of the powers.

Dr. Deshmukh in an amendment suggested that all orders issued by the Governor-General under the Section should be placed before the Dominion Parliament. The amendment was accepted. Dr. Deshmukh said that there was no intention of utilising the provisions at all but it was quite possible for the Governor-General to say that all Provincial Legislature should be composed for example of nominated members. There was nothing to stop him from issuing an order like that. The Bill amounted to say that all powers of Government should be vested in the Governor-General.

Prof. Shibbanlal Saksena said that such dictatorial powers should never be given to an individual as a matter of principle. The members of the Constituent Assembly were depriving themselves of the fundamental powers which the nation had invested in them.

PROF. SHAH'S CRITICISM

Prof. K. T. Shah protesting against the clause characterised the clause as "constitutional absurdity, intellectual dishonesty and moral inequity." He said that the clause and the sub-items enumerated therein meant that the constitutional rights and authority of the legislature was to be destroyed and in its place the "great monarch of the Governor-General" was to be put up. The Governor-General, according to this section, would take the place of the entire legislative body in reference to the items mentioned in the clause. He might act so "at any time."

Prof. Shah wanted to know whether the phrase "at any time" meant only the intervening period between now and the date at which this constitution would come into operation. He thought there was no intention to deny the operations of the provisions in regard to legislature made in the present constitution. Because the movers of the Bill had omitted to give a clear indication, he felt it necessary to characterise the clause as wanting in "intellectual integrity" and there was a certain amount of mental reservation.

Mr. Gopalaswami Ayyangar, intervening, asked what mental reservation could any one have about the use of the words "at any time." Everyone knew that the Government of India Act 1935 would be repealed by the new constitution. The Government could not keep it in force after the new constitution came into operation. The outside limit was therefore Jan. 26, 1950. What mental reservation could there be under these circumstances and how could Prof. Shah attack the intellectual honesty of the Government.

DR. AMBEDKAR EXPLAINS

In a spirited speech, Dr. Ambedkar detailed the provisions of the clause. He said that there was a great deal of misunderstanding as to what this particular clause proposed to do. He wanted to put the House in "a proper frame of mind" by explaining what exactly was intended to be done by this clause. He said the wordings of the original Section 291 of the old Government of India Act stated that "His Majesty in Council may from time to time make provisions in regard to all those matters" which were enumerated thereunder. In Clause 4 of the present Bill, the matters of which were enumerated in the old section, it had to be understood at the outset that this clause was not making any fundamental change in the provisions contained in original Section 291, instead of His Majesty in Council, the Governor-General was given the powers. The question could be asked why the Governor-General was given the power. He said that when the Government of India Act came to be adapted after the Independence Act, "a slip occurred." This power, which originally vested in His Majesty in Council, logically speaking ought to have been transferred to the Governor-General because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council.

Dr. Ambedkar said that while it was adapted, provision was made that these powers should vest with the Provincial Legislature.

It had now been discovered that it was an error. When the Government of India Act was adapted, the Governor-General and not the legislature should have been endowed with the powers because those powers rested with His Majesty in Council and not with local legislature. What they were doing now was to restore the old position as it existed under the unadapted Section 291 of the Government of India Act.

The Bill was framed to enable provinces, not particularly West Bengal. Some members had picked up that reference to West Bengal and charged the Government with mala fide intention towards the legislature in West Bengal. There was nothing of the kind. If a situation arose which called for its use it might be used in Bengal or Bombay. No conclusion should be drawn from that reference and there was nothing to quarrel with the particular clause.

Dr. Ambedkar said that the reason why the Governor-General was given the power was because the powers were wielded on the advice of the Central Government than to allow the chopping and changing of the authorities to be made on the advice of provincial ministries and legislatures that had got to be dissolved.

If elections were to be held, there would be no time to come to the Constituent Assembly to pass the necessary amendments, because if the Assembly kept to its schedule it would cease to function as a constitution-making body within the next fortnight and would be meeting again for the third reading only in October or in January.

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The second reading of clause 4 of the Bill (amending Section 291 of the Government of India Act provincial legislature) again produced prolonged debate.

Syed Karimuddin moved an amendment to the effect that the Governor-General's orders in regard to changing the legislature should be subject to confirmation by the Parliament within two months of the date of issue of the orders. He pointed out that the Section as it stood did not lay down provisions against the abuse of the powers.

Dr. Deshmukh in an amendment suggested that all orders issued by the Governor-General under the Section should be placed before the Dominion Parliament. The amendment was accepted. Dr. Deshmukh said that there was no intention of utilising the provisions at all but it was quite possible for the Governor-General to say that all Provincial Legislature should be composed for example of nominated members. There was nothing to stop him from issuing an order like that. The Bill amounted to say that all powers of Government should be vested in the Governor-General.

Prof. Shibbanlal Saksena said that such dictatorial powers should never be given to an individual as a matter of principle. The members of the Constituent Assembly were depriving themselves of the fundamental powers which the nation had invested in them.

PROF. SHAH'S CRITICISM

Prof. K. T. Shah protesting against the clause characterised the clause as "constitutional absurdity, intellectual dishonesty and moral inequity." He said that the clause and the sub-items enumerated therein meant that the constitutional rights and authority of the legislature was to be destroyed and in its place the "great monarch of the Governor-General" was to be put up. The Governor-General, according to this section, would take the place of the entire legislative body in reference to the items mentioned in the clause. He might act so "at any time."

Prof. Shah wanted to know whether the phrase "at any time" meant only the intervening period between now and the date at which this constitution would come into operation. He thought there was no intention to deny the operations of the provisions in regard to legislature made in the present constitution. Because the movers of the Bill had omitted to give a clear indication, he felt it necessary to characterise the clause as wanting in "intellectual integrity" and there was a certain amount of mental reservation.

Mr. Gopalaswami Ayyangar, intervening, asked what mental reservation could any one have about the use of the words "at any time." Everyone knew that the Government of India Act 1935 would be repealed by the new constitution. The Government could not keep it in force after the new constitution came into operation. The outside limit was therefore Jan. 26, 1950. What mental reservation could there be under these circumstances and how could Prof. Shah attack the intellectual honesty of the Government.

DR. AMBEDKAR EXPLAINS

In a spirited speech, Dr. Ambedkar detailed the provisions of the clause. He said that there was a great deal of misunderstanding as to what this particular clause proposed to do. He wanted to put the House in "a proper frame of mind" by explaining what exactly was intended to be done by this clause. He said the wordings of the original Section 291 of the old Government of India Act stated that "His Majesty in Council may from time to time make provisions in regard to all those matters" which were enumerated thereunder. In Clause 4 of the present Bill, the matters of which were enumerated in the old section, it had to be understood at the outset that this clause was not making any fundamental change in the provisions contained in original Section 291. Instead of His Majesty in Council, the Governor-General was given the powers. The question could be asked why the Governor-General was given the power. He said that when the Government of India Act came to be adapted after the Independence Act, "a slip occurred." This power, which originally vested in His Majesty in Council, logically speaking ought to have been transferred to the Governor-General because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council.

Dr. Ambedkar said that while it was adapted, provision was made that these powers should vest with the Provincial Legislature.

It had now been discovered that it was an error. When the Government of India Act was adapted, the Governor-General and not the legislature should have been endowed with the powers because those powers rested with His Majesty in Council and not with local legislature. What they were doing now was to restore the old position as it existed under the unadapted Section 291 of the Government of India Act.

The Bill was framed to enable provinces, not particularly West Bengal. Some members had picked up that reference to West Bengal and charged the Government with mala fide intention towards the legislature in West Bengal. There was nothing of the kind. If a situation arose which called for its use it might be used in Bengal or Bombay. No conclusion should be drawn from that reference and there was nothing to quarrel with the particular clause.

MR. N. G. AYYANGAR'S REPLY

Mr. Gopalaswami Ayyangar said that the fears that had been expressed in the House were "entirely and unduly exaggerated." He agreed that the reference to West Bengal might have been omitted but if West Bengal had been referred to in the statement of objects and reasons, it was only an illustrative reference. It was perfectly clear even from the statement of objects and reasons that the Bill did not apply to West Bengal in particular. It referred to provinces in general. Wherever in any province conditions developed which required the holding of a general election, those powers would come into play.

As Kazi Syed Karimuddin's argument that any orders passed under this Section should get the affirmative approval of the legislature within two months before it could become operative, Mr. Ayyangar said: "If we accept that amendment, we might as well give up this Bill, because what is intended is a provision for a period which is not likely to exceed more than five or five and a half months and if we in an order, which the Governor-General may pass, say, two months hence, and in another two months we have to get the affirmative approval of the legislature before it becomes operative, then practically there will be no time for the preparation of electoral rolls, much less for the holding of any general election before the new constitution comes into force."

He would request Kazi Karimuddin not to press his amendment. Kazi Karimuddin's purpose was served by Mr. Ayyangar's acceptance of Dr. Deshmukh's amendment.

As to how the legislature can make its own views effective, Mr. Ayyangar went on, "the only thing that I can say in reply is that when an order of that kind is placed before the legislature, it is open to any member of the legislature to make a motion or move a resolution as regards the content of that order and the House is at liberty to express whatever it considers its views to be. If an order is passed by the Governor-General say in September or October, if it ever comes to be passed at all, then it will be placed before the legislature, say during the November session, and if it happens to be passed later, it will come up before the January session. That is the utmost that can be done for the purpose of satisfying that particular principle."

Kazi Karimuddin's amendment was rejected. The House agreed to Dr. Deshmukh's amendment as accepted by Mr. Ayyangar.

Mr. H. V. Kamath said that Mr. Ayyangar's reply had left him completely unconvinced. Dr. Deshmukh's amendment "mellows the monstrosity to a very infinitesimal extent" but "it does not completely remove the evil nature of it."

Despite Dr. Ambedkar's statement to the contrary, Mr. Kamath asserted that the post-independence provision did not vest in His Majesty in Council such "unbridled power" as that now proposed to be given to the Governor-General.

He maintained that Parliament must have the overriding right not merely just to say "okay to the fait accompli" but to approve, alter, or reject whatever orders had been issued by the Governor-General. "If Parliament is going to be divested of that fundamental power," said Mr. Kamath, "I for one will not be a party to such a wicked transaction."

Mr. Kamath felt that there was difficulty in securing such prior approval of Parliament. "When the second reading of the [illegible] p.m. it will drizzling continuously.

constitution is over," he said, "we could convert ourselves into a legislature and by that time the Government can get the Governor-General to pass his orders and come before the House. Unless there is some sort of refractory attitude towards Parliament somewhere, there is no reason why such a course should not be adopted."

The House passed the Bill and adjourned till 9 a.m. tomorrow.—P.T.I.

RAJEN BABU ADVISED COMPLETE REST

Today's proceedings of the Constituent Assembly were conducted by Sir V. T. Krishnamachari, as Dr. Rajendra Prasad, has been medically advised to take complete rest. Sir Krishnamachari told the House that Dr. Prasad hoped to attend the Assembly from Monday onwards.

"I am sure," said Sir Krishnamachari amidst cheers, "that all of us wish him a speedy recovery."

Sir Krishnamachari is a member of the panel of chairmen of the Constituent Assembly.—P.T.I.

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H T. 20-8-49

The Hindustan Times

SATURDAY, AUGUST 20, 1949.

FIGHTING A SHADOW

Much of the vehemence shown by the few critics who attacked the Bill to amend the Government of India Act, 1935, moved by Mr Gopalaswami Ayyangar in the Constituent Assembly on Thursday, was due to the fact that the wording of one Section lent itself to the sort of misrepresentation in which they indulged. The Bill had a twofold object, namely, to include the subject of evacuee property in the Concurrent List in order that uniformity of policy in dealing with the subject might be possible, and, secondly, to authorize the Governor-General to make amendments in the Government of India Act, 1935, by order in relation to any provincial legislature with respect to such matters as the composition of the legislature, delimitation of constituencies, franchise, qualifications of members, conduct of elections, etc. The clauses regarding evacuee property were passed by the Assembly practically without any debate worth the name. A bitter battle was, however, waged over the clause amending Section 291 of the Act by a substitute. The clause which gave such wide powers to the Governor-General was attacked as "a constitutional monstrosity," and "a constitutional absurdity, intellectual dishonesty and moral iniquity." It was argued that under the powers thus granted to him, the Governor-General could change the whole complexion of the provincial legislatures, even to the extent of making them consist wholly of nominated members and that it was an insult to the Constituent Assembly that such drastic and arbitrary powers should be vested in the Governor-General.

Assuming that we had a Governor-General who was prepared to act in utter defiance of the basic principles of the constitution and the will of the people, the nightmare conjured up by Mr Kamath and Prof. K. T. Shah might become a reality. But the object of the Bill is clear. It is to provide against the possibility of general elections being held in provinces like West Bengal and East Punjab before the first elections under the new constitution. Those who criticized the present Bill will do well to remember that because of the situation in these two provinces, the possibility of amending the Act of 1935 in order to enable the Centre to take over their administration was being strongly canvassed some time back. That this was not done is itself proof that the Central Government, far from wanting to deprive provinces of their rights, are anxious to discover solutions for provincial problems consistent with the spirit of democracy. Secondly, the provision is only intended to cover the period between now and the date of the introduction of the new constitution which may well be January 26, 1950. To argue that Mr Rajagopalachari, Pandit Nehru and Sardar Patel are conspiring to establish a revolutionary dictatorship in the meanwhile is the height of absurdity. The Governor-General is mentioned because under the Act of 1935 all executive action is to be taken in his name, but there is this distinction between the Act as originally passed by the British Parliament and the Act as adapted after the passing of the Independence Act, that there is a Council of Ministers at the Centre on whose advice only the Governor-General can act. So that the danger of his acting arbitrarily, mentioned by the critics, was merely a debating point unrelated to the actualities of the situation.

Dr Ambedkar in his reply to the debate made the point that the Act as originally enacted gave these powers to His Majesty-in-Council and while adapting it a mistake was made in transferring this power to the provincial legislatures, the right authority to exercise these powers being the Governor-General. He argued that the Bill merely sought to set right this mistake. This may be true, but the real object is to enable the Centre to deal with the sort of situation that has arisen in West Bengal and which may arise in East Punjab and other provinces. Moreover, the right to change the composition of the legislatures figures in the present Bill, though no such power was given to the Governor-General under the original Section 291 or the same section as later adapted. The intention is to provide additional seats in provincial legislatures for displaced persons. The fact that Section 290 of the Government of India Act dealing with creation of new provinces and increasing or decreasing the areas of provinces already gives to the Governor-General the power to vary the composition of such legislatures appears to have been overlooked by opponents of the Bill. With the acceptance by Mr Gopalaswami Ayyangar of Dr Deshmukh's amendment providing that any order passed by the Governor-General under this section should be placed before Parliament, the danger of the powers given being used arbitrarily by anyone may be safely discounted. The Bill is a timely measure which will help the Government to meet possible eventualities and as such will be welcomed by the public.

UPPER CHAMBER'S COMPOSITION LAID DOWN

(By Our Special Correspondent)

NEW DELHI, Friday.—Dull and desultory speech-making marked the proceedings of the Constituent Assembly this morning when it considered provisions relating to the composition of Upper Houses in the provinces and financial grants to the units during the period of emergency.

The debate on Upper Houses brought out nothing new. This complaint was, in fact, the only reply given by Dr Ambedkar when answering criticism of the provision proposed by him. The Article, he explained, was as reasonable as could be in the present circumstances, and since none of the speakers had made a constructive suggestion for modification there was no reason why the House should not accept it.

As passed the Article lays down that the total strength of the Upper House in any province shall not exceed a quarter of the total strength of the Lower House and shall in no case be less than 40. One-third of the members are to be elected by local bodies, one-twelfth by university graduates, one-twelfth by teachers, one-third by members of the Lower House from among persons who are not its members and the remainder are to be nominated by the Governor. The Article also lays down that Parliament may by law alter the composition of the Upper Houses at any time.

Detailed report on page 5

The main feature of the debate on financial arrangements during a period of emergency was an amendment moved by Pandit H. N. Kunzru who was opposed to the Centre having unfettered powers to alter the amount of the share of the provinces in income-tax revenue. He denounced the Drafting Committee's proposal as one that would lead to financial autocracy.

Mr Alladi Krishnaswami Ayyar giving a technical exposition of the Article, gave the assurance that it proposed nothing drastic and should give no cause for alarm.

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Hindustan Times 20-8

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Amrita Bazar Patrika

22-8-49

EMERGENCY POWERS

MANY CAREFUL READERS OF the proceedings of the Constituent Assembly have begun to wonder whether the new Constitution of India will be federal or unitary. In the Draft Constitution the emphasis was on the Centre, although the Provinces were given a decent measure of autonomy. That arrangement was generally favoured by the public, for it was felt that a strong Centre was needed to keep the disintegrating tendencies in check and also to secure for India an effective voice in international affairs. Later on the Drafting Committee began to amend the Draft Constitution in a rather drastic way. It was somewhat strange that almost all the amendments had only one purpose: to strengthen the Centre at the cost of the Provinces. Having regard to the composition of the Constituent Assembly it is practically certain that any thing recommended by the Drafting Committee would be received with "a chorus of ayes", although a handful of members exhaust themselves in ineffective speeches and lightly treated amendments. We are not quite sure whether the obliging mebers of the Constituent Assembly fully realise the implications of their readily given assent to the proposals of the Drafting Committee. If they are convinced that the country's interests are likely to be served best by a unitary Constitution, let them say so boldly, take the country into confidence, and openly reduce the Provincial Governments to the position of agents of an all-powerful Centre. We have talked so long of Federalism and Provincial autonomy that our repudiation of those principles requires open avowal and convincing justification. If, on the other hand, the Constitution-makers feel that India is too large and too diverse to be governed from New Delhi, they should assert themselves and scrutinise Dr. Ambedkar's newly devised amendments before registering a hurried consent. The issue is too vital to be glossed over, and a clear analysis is long overdue.

On August 20 the Constituent Assembly adopted two Articles of vital importance, Article 277 enables the President to modify the financial arrangements between the Centre and the Provinces during an emergency; every order made under the Article shall, as soon as may be after it is made, be laid before each House of Parliament. This is an extraordinary provision. Section 93 of the Act of 1935 does not contemplate the suspension or modification of allocation of grants to the Provinces from the Centre. Neither the Union Powers Committee nor the Provincial Powers Committee of the Constituent Assembly recommended any such provision. Mr. B. Das, ex-Premier of Orissa, rightly pointed out: "There was a possibility of the Section being misused if different political parties were in power in the Centre and in the Units." A Central Government might starve a Provincial Government into submission to its orders. A Province pursuing a policy disliked by the party in power in the Centre might be refused its legitimate share of Income Tax and Central Excise Duties. It might be refused such grants and subventions as it received in normal times. Is there any guarantee that this weapon will not be exercised for *mala fide* purposes? There is no guarantee in the Constitution. There is no time-limit within which the President's order must be laid before Parliament. An interval of three months between the stoppage of grants and submission of the order to Parliament may paralyse Provincial administration. There is, again, no guarantee that Parliament will take an impartial view of the matter. The President will act on the advice of the Central Cabinet which will represent the majority party in the Central Legislature. Can we expect this majority party to disapprove what the Cabinet has done? Dr. Ambedkar asked, "where was the ground to believe that in exercising the power to modify the provisions relating to Income Tax the President would arbitrarily wipe out the proceeds to which the Provinces were entitled"? The learned Minister of Law forgot that the President would be the mouthpiece of a party. A political party is not always just, reasonable and impartial. In any case, the vital financial interests of the Provinces should not be left at the mercy of the party in power at the Centre.

> Article 280 runs as follows: (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order. (3) Every order made under Clause I of this Article shall, as soon as may be after it is made, be laid before each House of Parliament.

Thus the President will have the legal power to deprive the citizens of their fundamental rights for an indefinite period. We say 'for an indefinite period' because there is no time-limit within which the President's order must be laid before Parliament. The President will, of course, act on the advice of the Central Cabinet. Thus the Executive will enjoy the power of suspending fundamental rights. Dr. Ambedkar admitted that in England the Executive does not enjoy this power, but he contended that in the U.S.A. "while the power is left with Congress, the President also is vested with what might be called an *ad interim* power of suspension." Pandit Kunzru disagreed with this interpretation of the American Constitution, and although we readily admit Dr. Ambedkar's claim to be "familiar with" fifty books on that subject, we endorse Pandit Kunzru's view. Even if we prefer Dr. Ambedkar's contention we cannot say that Article 280 is an exact copy of the American model. In India the President's power to suspend fundamental rights is much more than an *ad interim* power, for, as we have pointed out, there is no time-limit prescribed in the Constitution. There is, however, a more important point of difference. The American President is the *de jure* and *de facto* head of the Administration, but the Indian President is not. The American President speaks and acts for himself: the Indian President speaks and acts for his Cabinet.

Dr. Ambedkar made a strange statement which should not pass unnoticed. "In framing our Constitution," he said, "we have more or less followed the American precedent." Does "the American precedent" provide for an Executive responsible to the Legislature? Some of the most undesirable features of our new Constitution owe their origin to Dr. Ambedkar's plan to combine the British and American models. It is difficult to harmonise two such contradictory systems of Governments.

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India express 26.8.49.

RESERVATION FOR SCHEDULED CASTES AND ANGLO-INDIANS IN LOWER HOUSES

C.A. Limits Period To 10 Years

NEW DELHI, Aug. 25.

THE Constituent Assembly today adjourned after a two-hour sitting, during which it adopted Article 295-A limiting to ten years the period of reservation of seats in the Lower Houses of the Union and States for Scheduled Castes and Scheduled Tribes, and the Anglo-Indian community.

The clause, as it originally stood, did not specify the Anglo-Indian community, but the House accepted an amendment to that effect moved by Pandit Thakurdas Bhargava (East Punjab).

Dr. B. R. Ambedkar, Chairman of the Drafting Committee, explained that although in the general body of the Minorities Advisory Committee's report no mention was made as to the time limit or representation of Anglo-Indians by nomination, he found that, in the subsequent debate which took place on that report, an amendment moved by Pandit Bhargava for the inclusion of Anglo-Indians was accepted by the House. Dr. Ambedkar was, therefore, bound to accept Pandit Bhargava's amendment.

During the debate, several members, including Mr. S. Nagappa and Mr. Muniswami Pillai, Madras Harijan members, expressed the fear that the ten-year period might not be enough for the Scheduled Castes.

Dr. Ambedkar replied that it would have been quite proper and generous of the House to have given to the Scheduled Castes a longer term with regard to this reservation but it had been accepted earlier by Mr. Nagappa. Mr. Pai and others acting "on the other side". Dr. Ambedkar thought that it was not right now to go back on these provisions. If the Scheduled Castes at the end of ten years found that their position had not improved and they wanted a further extension of this period, it would not be beyond their capacity or beyond their intelligence to invent new ways of getting the same protection which they were promised under this Article.

When the Constituent Assembly today resumed discussion on Article 295-A, which seeks to limit the period of reservation of seats in legislatures for Scheduled Castes and Tribes to ten years, Mr. S. Nagappa (Madras) moved an amendment to provide that the reservation would end after ten years, only if by that time the Scheduled Castes and Tribes had been brought economically, politically and socially to the level of other communities.

Mr. Nagappa wanted a Minister to be appointed at the Centre for Harijan uplift and five per cent of the Central revenues to be set apart for grants to the provinces for the welfare of the Harijans. He sponsored a scheme for making workers the owners of industry. He complained that among the Ambassadors and Governors appointed so far there was not a single Harijan. He suggested that every Public Service Commission should have at least one Harijan member. Harijan, Mr. Nagappa urged, should be recruited to the army not merely as sepoys but also in responsible positions. He favoured the appointment of a Commission after five years to go round the country and study what progress has been made in the advancement of Harijans and make suitable suggestions.

Members interrupted Mr. Nagappa frequently and suggested to the House that many of his remarks were "irrelevant."

Mr. V. I. Muniswami Pillai (Madras) moved an amendment which said that the reservations could be continued for a longer period if Parliament so decided. Mr. Pillai said that under Article 291-A special officer was to be appointed at the Centre who would study how the safeguards were working and report to the President who would place it before Parliament. Mr. Pillai suggested that Parliament should be able, after considering the report, to continue the safeguards for a further period if necessary. Mr. Pillai said though the Minorities Advisory Committee's report was discussed and adopted by the House in 1947, nothing had been done by the provincial Governments to implement them. Only in the United Provinces, and in Madras to some extent, had some steps been taken, he added. He felt that unless Government took a keen interest in this period of ten years, Harijans would not be able to come up to the level of other communities.

Mr. Naziruddin Ahmed (West Bengal) by his amendment wanted that after the expiry of ten years when provisions in the constitution relating to the reservation of Scheduled Castes would cease to have effect, a general election should be held.

Dr. Rajendra Prasad: "The point which you have raised is covered by another amendment" (standing in the name of Dr. Ambedkar and Mr. T. T. Krishnamachari).

Mr. Ahmed: "If that is so, sir, the idea must have been misappropriated from my amendment. This is a great compliment to me."

Mr. Ahmed said the Article as it stood was ambiguous in as much as it was not stated whether the Assemblies would be dissolved after ten years or continue to function till the next election.

POSITION OF ANGLO-INDIANS

Pandit Thakurdas Bhargava (East Punjab) moved an amendment seeking that reservation through nomination given to the Anglo-Indian community should also cease to have any effect after ten years.

Mr. T. T. Krishnamachari moved an amendment seeking to add a proviso to the new Article moved by Dr. Ambedkar. It stated that—"nothing in the Article shall affect the representation in the House of the People or Legislative Assembly of a state until the dissolution of the then existing House or the Assembly as the case may be."

Mr. Krishnamachari explained that there was a lacuna in the Article. The period of ten years—for which the reservation for Scheduled Castes was to be limited—might terminate at a time when the House or the Assembly would have just begun its life or had been half way through its life. The representation in the House should not be affected by the Article. If the amendment was accepted, then the reservation would continue to operate till the life of the House or legislature was completed.

Speaking about the representation to the Anglo-Indian community, Mr. Krishnamachari explained that it was merely a "permissive provision." It was not an obligatory or statutory provision. Full discretion had been given to the President. The Anglo-Indian community was a distinct community and it would be cruel to ask these people completely to merge themselves in the quickest possible time in the busy politic. There was nothing inconsruous in giving the Anglo-Indian community a privilege which was only granted to them ex-gratia.

Mr. Chandrika Ram (Bihar), supported by Mr. Jagat Narain Lal (Bihar), emphasised the need for tackling vigorously within the next ten years the question of raising the level of the Backward Classes to that of the advanced classes.

Referring to the Anglo-Indian community, Mr. Jagat Narain Lal said, "The Anglo-Indians are the most enlhightened and most advanced community in this country. If there is any case for reservation for them, it is that they are in a great minority, but there are also so many other communities who are in a very great minority. No community, however small, should ever think of claiming representation in the legislatures or anywhere else on the ground of being in a minority or majority. Service, ability and capacity alone should be the deciding factor. If there are members of the Anglo-Indian community, advanced as they are, who are equally imbued with a spirit of service to the country and to the people, they will continue to have representation without reservations".

Mr. Upendranath Barman (West Bengal) called upon the Caste Hindus to appreciate the problem of the Scheduled Castes and Tribes with the vision of Rabindranath Tagore who had said, 'Those you have left behind, they are dragging you down'. He was sorry that even after two years of Independence, no vigorous drive had been made to get this curse lifted. If the Scheduled Castes found that their interests were not being served by the intelligent sections of the people thou what they had to do was to take full advantage of adult franchise and take charge of the Government of the country. They would then be able to do justice to themselves and others.

Mr. Arjuna Sahai (Bihar) said that the ten-year time limit for reservation was a test not so much to the Scheduled Castes and Tribes as to the more advanced sections of society. He wanted everyone who worked for their uplift to imbibe the message of Mahatma Gandhi.

The Bihar Government, said Mr. Sahai, though the province was poor, had in the last three years spent over a crore of rupees on the construction of irrigation bunds in the five districts of Chota Nagpur inhabited by the Tribes.

The debate was ended by the adoption of a closure motion.

DR. AMBEDKAR'S REPLY

Dr. B. R. Ambedkar, replying to the debate, said that he was prepared to accept Pandit Bhargava's amendment laying down a ten-year time limit for the representation of Anglo-Indians by nomination. Such a time limit was not suggested in the general body of the report of the Minorities Advisory Committee, but a similar amendment moved by Pandit Bhargava during the subsequent debate was accepted by the House and Dr. Ambedkar was, therefore, bound to accept it.

As regards Mr. Naziruddin Ahmed's amendment, one part of it had been met by Mr. Krishnamachari's amendment which Dr. Ambedkar was accepting. "I am not at all clear in my own mind at the present stage from the words in the clause whether the time limit should begin to operate from the commencement of the constitution or from the date of the first election to the new Parliament. That is a matter which the Drafting Committee will consider and, if necessary, we will bring the amendment to carry out the intention that the period should be from the time of the meeting of the first Parliament."

Dr. Ambedkar said that it was not possible for him to accept Mr. Muniswami Pillai's and Dr. Mono Mohan Das's amendment. While they were prepared to leave the clause as it stood, they proposed to vest Parliament with the power to alter the clause by further extension of the ten-year period. As this matter was being introduced in the constitution, Dr. Ambedkar did not think that the House should permit any chance to be made in this except by amendment of the constitution itself.

Dr. Ambedkar went on: "I should like to say one or two words with regard to the members of the Scheduled Castes who have spoken in somewhat passionate and vehement terms on the limitation imposed by this Article. They have really no cause for complaint because the decision to limit the reservation to ten years was taken with their consent. I myself was prepared to press for a longer time because I do feel that so far as the Scheduled Castes are concerned, they have not been treated on the same footing as the other minorities.

"For instance, so far as I know, the special reservation for Muslims started in the year 1892. Therefore, the Muslims have practically enjoyed these privileges for more or less 60 years. The Christians got this privilege under the Constitution of 1920. The Scheduled Castes got this only in the Constitution of 1935. The commencement of this benefit of special representation practically began for them in 1937, when the Act came into operation.

"Unfortunately for them, they had the benefit of this only for two years, for from 1939 to 1946 the Constitution was suspended and the Scheduled Castes were not in a position to enjoy the benefit of the privileges which were given to them by the 1935 Act and it would have been quite proper and generous on the part of the House to have given to the Scheduled Castes a longer term with regard to these reservations. But it was accepted by Mr. Nagappa, Mr. Muniswamy Pillay and all those members who, if I may say so—I am not making a complaint—were acting on the other side and I think it is not right now to go back on these provisions. If at the end of the ten years the Scheduled Castes find that their position has not improved or if they want a further extension of this period, it will not be beyond their capacity or intelligence to invent new ways of getting the same protection which they are promised under this article."

Replying to one of the members, Dr. Ambedkar said, "I would be perfectly prepared to give the Scheduled Castes a far longer term than is given in this article. To all those people who have been so meticulous that this thing must end in ten years, I would like to quote Edmund Burke 'Large Empires and small minds do not go together.'" (Cheers).

All amendments excepting those moved by Pandit Bhargava and Mr. T. T. Krishnamachari were either withdrawn or rejected.

Article 295-A, as a adopted by the House reads: "Notwithstanding anything contained in the foregoing provisions of this part, the provisions of this constitution (a) relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes either in the House of the People or in the Legislative Assembly of a State, (B) Relating to the representation of the Anglo-Indian community either in the House of the People or in the Legislative Assembly of the States through nomination, shall cease to have effect on the expiration of a period of 10 years from the commencement of this constitution.

Provided that nothing in this Article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or the Assembly, as the case may be."

The House adjourned till to morrow.—P.T.I.

RAJEN BABU'S SUGGESTION

The President of the Constituent Assembly Dr. Rajendra Prasad, told the House today that it would be better if the sittings were shortened for a day or two to give some time to the Drafting Committee to deal with the Articles still outstanding.

Mr. Naziruddin Ahmed (West Bengal) suggested that the Drafting Committee should be given ample time to finish all their drafts. This would also enable members to come prepared.

Dr. Rajendra Prasad: "The difficulty, as I understand it, is not only with the Drafting Committee. There are certain matters which require further consideration on which decision has not been taken by all concerned. Therefore it is no use giving the Drafting Committee more time than it requires."

Some of the members in the lobby read into these remarks an indirect reference to the Congress Assembly Party.

Indian express 26-8.

Nation 26-8

Break With The Past

DECISIONS reached by the Advisory Committee on minorities have only been confirmed by the Constituent Assembly. Early this year, after affirming that India would be a secular state, all leaders set their face against separate electorates and reservation of seats. Muslims in the Constituent Assembly came to see the need for divorcing religion from future political Arrangements. And the announcement in the middle of May that even Sikh claims would be modified and only the Harijans would for a term qualify for protection in the matter of representation followed the decisions reached by the Advisory Committee on minorities. It was then noted with gratification that Indian Christians had waived their claims and that Sikhs sought only safeguards for those Sikhs depressed like Harijans and aboriginals. The decision then made was called a significant and absolute break with the past as typified by separate electorates and reserved seats. Mr. R. K. Sidhwa described the departure from the draft as a triumph for the new ideas of equality. If there is to be equality as well as liberty safeguards are superfluous. That is the assumption on which the Constituent Assembly has acted even when providing for a quota of seats for Harijans. What Sardar Patel prescribed was temporary protection for designated groups leading duly to their merger in the general electorate after a fixed period of ten years only. That view has been upheld in defining the need for territorial constituencies. We have certainly travelled a long way from the Lothian report discussing and fixing the arrangements under the 1935 Act. There is provision for adult suffrage and only in cases like Anglo-Indians, numerically weak, is there a place for nomination. Though Mr. Jaipal Singh pleaded that Adibasis should be represented according to population figures it was indicated by Dr. B. R. Ambedkar that scheduled and tribal candidates are free to stand for general seats also in the coming elections.

The debate revealed few differences though members from Assam dwelt on the need to give the tribes enough seats. There was criticism of the available census figures while it was pointed out that Bengali or other minorities in Assam might suffer from the preponderance of Khasi or other members. Anyway, no objection to the modifications ordered by the Advisory Committee at Sardar Patel's instance was advanced. Amendments were withdrawn after Dr. Ambedkar assured the Assembly that adequate representation on the basis of new estimates relating to population would be afforded to Harijans and aborigines. Since the Governors have been assigned special powers and duties in respect of tribal areas there seems no ground for Mr. Jaipal Singh's fear that Adibasis would fare badly under any arrangement devised hereafter. The notion of excluded areas and castes has been annulled by the fundamental principles of the constitution which merely seeks to give the minority the same status as the majority in all matters including votes. After Muslim Leaguers renounced their original views regarding segregation of Muslim voters in a separate list it has been apparent that the only possible scheme for minority protection is the reservation of seats for ten years. The Anglo-Indians for whom seats are allotted on a different basis differ from Harijans and tribal people in many respects and one might even say that they qualify for weightage after the scrapping of seats for Europeans, once made a minority entitled to too many seats on their own. The contrast between past and future deserves attention if only for the complete relinquishment of claims advanced in the face of majority rights under foreign rule which took note of differences in order to prepare schedules of castes and to perpetuate groups especially in Bengal.

RESERVATIONS

THE Constituent Assembly of India have passed Articles providing for reservation of seats for Scheduled Castes and scheduled tribes in the lower Houses of the Union and States. Dr. Ambedkar, Chairman of the Drafting Committee, explained that the articles were "an exact reproduction of the decisions of the Minorities Advisory Committee", presided over by Sardar Patel. It does not matter to whom the blame and the responsibility for a decision of this character belong. What should have mattered is the principle involved. Separate representation, and reservation of seats, have been the undoing of India's national life. For well over a quarter of a century, India's national leaders have condemned in no uncertain terms this vicious programme of separate representation and reservation of seats for this or that minority. The loudest voice in condemnation of this anti-national step naturally came from some of the present-day leaders of the Congress and the Government. Enjoyment of power and responsibility seems to have given them a different outlook today, and what was wrong yesterday has become right today. They are possessed by a spirit of compromise and accommodation, and in that spirit they have forsaken many a long cherished principle.

Separate representation, and reservation of seats, have led directly to the "two-nation theory", and the division of the country. These are responsible for the separatist conceit which has poisoned the very springs of our national life. Politics, economics, language, culture, the interests of a common life, geography are all forsaken and subordinated to the demands of a communal bias. In agreeing to reservations of seats for the Scheduled Castes, the Constituent Assembly has again opened the door to anti-national mischief. A nation's life is not simply a piecing together of diverse claims and interests. It should involve a spiritual process. Moreover, the Scheduled castes are integral to the Hindu Community, and apart from isolated cases of interesting individuals, their needs and interests are akin to and inseparably linked with the needs and interests of the entire Hindu Community. The Constituent Assembly has taken a short sighted view of the matter—and a suicidal step. It directly cuts across any concept of national unity.

Hindustan Times 26-8

INTERNATIONAL FORM OF NUMERALS IS INDIAN

C.A. CONGRESS PARTY CONSIDERS NEW ARTICLES ON LANGUAGE

(By Our Special Correspondent)

NEW DELHI, Thursday.—The Prime Minister once again addressed a meeting of the Congress Party in the Constituent Assembly on the question of numerals this evening when a revised draft on the language question was considered. The draft prepared by Mr K. M. Munshi and Mr Gopalaswami Ayyangar follows the original provisions suggested by the Drafting Committee with some significant changes in the light of Pandit Nehru's views expressed at an earlier meeting.

"International numerals" in the new draft have been described as "international forms of Indian numerals." The Prime Minister told the meeting that India should be proud of the fact that the mathematical concepts originating here had been universally accepted and that the numerals had become part of the essential equipment of all nations. Instead of being hesitant about accepting those numerals they should shout from the house tops that they were their own and that they were not borrowing anything from any other country. It would be a shame if anyone suggested that the numerals were foreign or alien in any sense of the word. They were their own and they should have no compunction in adopting them for the entire country.

Regional Languages

A schedule has been added mentioning 14 languages which might be recognized as the regional languages. They are: Hindi, Urdu, Punjabi, Kashmiri, Bengali, Assamese, Oriya, Telegu, Tamil, Malayalam, Canerese, Marathi, Gujarati, and English. The schedule has been included in order to enable the President to direct the recognition of any language mentioned in it as one of the official language of a State if he is satisfied that a substantial proportion of the population desires it to be used.

The provisions relating to appointment of a commission at the end of five years and again 10 years after the commencement of the constitution remain, but the parliamentary committee is now proposed to comprise 20 members from the Lower House and 10 from the Upper House instead of 15 from each.

As to the question of development of Hindi, the prevision is no longer proposed to be included in the Directive Principles of State Policy, but is to be included among other articles on the national language. The new Article states: "It shall be the duty of the Union to assist the spread of Hindi and to ensure that the language is developed so as to serve as a rich medium of expression for all the elements of the composite culture of India and is enriched by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

The additional provision enjoining on the State to develop the Devanagari script throughout the territory of India has been dropped in the new draft as suggested by Pandit Nehru. A new provision has been added to enable people "to submit their representation or communication to any officer or authority of the Union in any of the languages specified in the schedule."

No decisions were made at the meeting primarily because Dr Pattabhi Sitaramayya, who was in the chair, was insistent that, if possible, the question should not be discussed by a vote and that they should try for an agreed solution. The question is expected to be considered again tomorrow.

MUNSHI-AYYANGAR DRAFT

The following is the text of the revised draft by Mr Munshi and Mr Ayyangar:

301-A. (1) The official language of the Union shall be Hindi in Devanagari script with the international form of Indian numerals;

(2) Notwithstanding anything contained in clause (1) of this article, for a period of 15 years from the commencement of the constitution, the English language shall continue to be used for all official purposes of the Union, for which it was hitherto used, provided that the President may, during the said period, by order authorize for any of the official purposes of the Union the use of the Hindi language in addition to the English language;

(3) Notwithstanding anything contained above, Parliament may by law provide for the use of the English language after the said period of 15 years for such purposes as may be specified in such law.

301-B. (1) The President shall, at the expiration of five years from the commencement of this constitution and thereafter at the expiration of ten years from such commencement, by order constitute a commission which shall consist of a chairman and such other members representing the different languages specified in the schedule as the President may appoint;

(2) It shall be the duty of the Commission to make recommendations to the President as to:

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) Restrictions in the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in Article 301-G of this constitution;

(d) the choice of numerals to be used for any one or more purposes of the Union; and

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State communication and its use.

(3) In making their recommendations under clause (2) of this Article the Commission shall pay due regard to the industrial, cultural and scientific advancement of India, and the just claims and interests of the non-Hindi speaking areas in regard to the public services.

(4) Parliament shall constitute a Committee consisting of 30 members of whom 20 shall belong to the House of the People and ten to the Council of States chosen by the House concerned in accordance with the system of proportional representation by single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under this article and to report to the President their opinion as to whether all or any of the recommendations should be accepted.

(6) Notwithstanding anything contained in Chapter I of this part, the President may accept the whole or any part of the report referred to in Clause (5) above.

301-D. Subject to the provisions of articles 301-E and 301-F, a State may by law adopt any of the languages specified in the schedule or Hindi as the language or languages to be used for all or any of the offi-

Continued on back page, col. 3

NEW DRAFT ON LANGUAGE

Continued from page 1 col. 7

cial purposes of that State, provided that until the legislature of the State otherwise provides by law, the English language shall continue to be used for such official purposes within the State for which it was being used at the commencement of this constitution.

301-E. The language for the time being authorized for use in the Union for official purposes shall be the official language for communication between a State and the Union.

301-F. (1) Where on a demand the President is satisfied that a substantial proportion of the population of a State desires to use any of the languages of India specified in schedule, he may direct that that language shall also be an officially recognized language in that State for such purposes as he may prescribe.

301-G. Notwithstanding anything contained in the foregoing provisions of this part, until Parliament by law otherwise provides:

(a) all proceedings in the Supreme Court and in every High Court;

(b) the authoritative texts.

(i) of all Bills to be introduced or amendments or motions or resolutions to be moved in either House of Parliament or in the House or either House of the legislature of a State;

(ii) of all acts passed by Parliament or the legislature of a State and of all ordinances promulgated by the President or a Governor or a ruler, as the case may be; and

(iii) of all orders, rules, regulations and bye-laws issued under this constitution or under any law made by Parliament or the legislature of a State, shall be in the English language.

301-H. No bill or amendement making provision for the language to be used for any of the purposes mentioned in Article 301-G of this constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under Article 301-B of this constitution and the report of the Committee referred to in Article 301-C.

301-I. Every person shall be entitled to submit a representation or communication to any officer or authority or communication to any officer or authority of the Union or State in any of the languages specified in the schedule.

301-J. It shall be the duty of the Union to assist the spread of Hindi and to ensure that the language is developed so as to serve as a rich medium of expression for all the elements of the composite culture of India and is enriched by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

The following is the schedule of languages: Hindi, Urdu, Punjabi, Kashmiri, Bengali, Assamese, Oriya, Telugu, Tamil, Malayalam, Canarese, Marathi, Gujarati, and English.

INDIAN REPUBLIC

SATURDAY, AUG. 27, 1949

RESERVATION FOR SCHEDULED CASTES

The adoption by the Constituent Assembly of Article 292 providing for reservation of seats for the Scheduled castes and tribes in the lower Houses of the Indian Union and states is an indispensable concession to the backwardness of these sections of the population. It is justified mainly on that ground. The principle had been accepted earlier that reservations of all kinds in the legislatures should be abolished as being antithetical to the ideal of democracy; and as a consequence separate representation for Muslims, Indian Christians and Sikhs had been abolished. At the same time an exception was made in the case of the Scheduled castes and the adoption of the Article referred to simply implements that decision.

There is no doubt that backward sections of the population, forced to remain backward for various reasons, should be afforded opportunities to participate fully in the political life of the country and improve their economic conditions But it is not very self-respecting or relevant for representatives of these communities to reiterate their backwardness *ad nauseum* or to make a virtue of it and put forward claims on their behalf. The legitimate and just rights of these communities, which everyone accepts and recognises as such and is willing to see fulfilled, need not be vitiated by a too vehement advocacy. If, instead of that, leaders of the communities make sincere and assiduous efforts to ameliorate their conditions, taking advantage of the unstinted sympathy of the public and the preparedness of the state to aid that process, they would be justifying their leadership and at the same time advancing the real interests of those for whom they speak. Their aim should be to ensure that in as short a period of time as possible, there is no section of the population which will be branded with the stigma of backwardness or which has to be included among "Scheduled Castes." The provision in Article 295-A of a ten year tenure for the principle of reservation of seats for them in the Union and state legislatures is justified on this score. It should prod the communities to intensive efforts at self-amelioration. Under the stimulus of adequate legislative representation provided for them, backward communities like the Harijans and the Adivasis should march ahead and make the best of their opportunities.

Apart from the reserved seats, members of the Scheduled castes, will also be entitled to contest general seats with members of other communities. By clarifying this point, Dr. Ambedkar has opened up the possibility of backward classes' representation being considerably extended. We are sure that meritorious candidates from the Scheduled castes will be returned with majorities from the general constituencies, thus proving that in a true democratic order, which we are trying to build up, statutory backwardness is not a practical disqualification. Thus we can easily envisage a situation in which a person such as Dr. Ambedkar or Mr. Muniswami Pillai or Mr. Japal Singh will be returned at the head of the pol if they prefer to contest genera seats. The Constituent Assembly also adopted an Article (293) which authorises the President to nominate not more than two Anglo-Indians to the House of the People if he is of opinion that the community is not adequately represented there. Similar discretion is also vested in the Governors of states to nominate Anglo-Indians to the state Legislative Assemblies.

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Tribune 27-8 Indian Express 29-8

MINORITY RIGHTS

The absence of any opposition in the Constituent Assembly to the reservation of seats in the provincial and Central legislatures for a period of ten years for the scheduled castes and tribes is a measure of the consciousness among the caste Hindus of their obligations towards the Harijans. Economically and socially situated as the scheduled castes are, we do not think they will be in a position to compete with other groups for electoral support in ten years. The Constituent Assembly would have been well advised to leave the question of extending the period of reservation, if necessary, to the Union President and State Governors. The process of constitutional amendment is admittedly a very difficult and complicated affair and, even if a majority of the people are prepared to extend reservation of seats in the provincial and Central legislatures for the scheduled castes, they may not be able to mobilise enough support for an amendment of the constitution. The ten-year limit, we believe, is unwise. There seems to be a feeling among a large number of members that reservation of seats is a necessary evil which the sooner we can dispense with the better. Reservation of seats is not necessarily incompatible with the democratic process. Majority-rule can operate only when there is political and economic homogeneity in the community. There is a profound truth in Lord Balfour's remark that democracy can successfully function when all sections of the community are agreed on fundamental objectives. A community or a group which for centuries has remained disenfranchised and disinherited under an iniquitous social system cannot be expected to have that sense of homogeneity and fellow-feeling which alone constitute the spiritual foundations of democracy. We hope political parties will make a point of setting up as many scheduled caste candidates to contest elections on their behalf as possible. Nothing is likely to contribute more to a sense of unity and fellow-feeling than the willingness of the political parties to nominate members of the scheduled castes as their candidates to contest general seats.

The reasons which prompted the Constituent Assembly to pass Articles 293 and 295 of the draft constitution giving power to the Union President and State Governors to nominate Anglo-Indians to the Central and State legislatures were of a character entirely different from that which led it to reserve seats for the scheduled castes. The Anglo-Indian community is neither educationally nor economically backward as compared with other sections of the people. It is not entitled on the ground of backwardness to any preferential treatment. The problem of the Anglo-Indian community is partly psychological and partly economic. While the leadership of the community has been, on the whole, forward-looking and realistic, the rank and file of the community has been singularly lacking in those qualities. It had so completely identified itself in the past with the ruling caste that after the attainment of independence it found itself as if in an alien land. The period of ten years is a kind of psychological preparation for assimilation of new ideas. Economically, the Anglo-Indian community had carved out under the British a position of privilege for itself in certain services. There is no justification whatsoever for letting the community continue to enjoy that privileged position. But the framers of the draft constitution and the Minorities Advisory Committee feel that a sudden withdrawal of the concessions which that community has been enjoying in the past would result in serious discomfort and hardship to a large number of its members and that they should be given time to adjust themselves to new conditions.

The question of the reservation of seats for the minorities raises the problem of reservation of seats for them in public services. It is certainly objectionable that public services should be generally recruited on any other basis than that of merit. But there are certain minorities which are economically and educationally so backward that they would remain debarred from public services because of their backward state of development for an indefinite period unless the Government were determined to secure their representation through reservation or other devices without impairing, of course, administrative efficiency. The minorities we have in view are not the Muslims or the Sikhs who have the same educational opportunities and who live in the same state of economic development as the Hindus. We have in mind minorities like the scheduled castes and the tribes which occupy a definitely inferior economic status largely in consequence of a wrong social policy.

* * *

The Constituent Assembly has been busy debating the functions and status of the Public Service Commission. Safeguards for Government servants have been devised by investing the Commission with wide powers. Parliamentary supervision will remain, but the object is to prevent nepotism and worse. The Constituent Assembly has also dealt with the minority problem by scrapping separate electorates and providing for reserved seats for Harijans and aborigines only. The break with the past is seen also in the rules for representation of Harijans in the services. The old idea of safeguards for civil servants and scheduled castes has been modified drastically. But the special position of the Anglo-Indians has been recognised in the provision for nomination to the legislatures. The formation of an opposition group including Muslims calls for mention. The withdrawal of Socialists from the Congress is confirmed by the decision taken by Seth Damodar Swaroop and others. The rise of a ginger group may signify little for the present, particularly in the light of the Socialists' failure in the local board elections in Madras. A convincing victory for the Congress underlines the impression that the Congress is in a position to carry out reforms when called for. The Working Committee has not changed its views regarding West Bengal. Pandit Nehru has indicated that charges against the Bengal Ministers are without foundation. The Socialists have refused to join forces with Mr. Sarat Bose and the episodes of unrest in the Calcutta suburbs can be ignored.

* * *

The Constituent Assembly has reached no decision regarding the official language. Refusal to give up Arabic numerals has been mentioned. The claims of Hindi have been vigorously debated but any decision must conform to educational policy. The Universities commission has indicated that collage courses must be in English. It has explained its own view as to the examination system. It has also made it clear that the universities must get more support. The Universities Commission in advocating national education has emphasised the need for autonomy and variety. Mass lectures and note taking are deprecated and the commission has no doubts as to the modifications called for in the secondary course. Dr. Radhakrishnan before leaving for Moscow with the Prime Minister's good wishes has explained the need for reforms. As much as education foreign trade has been in the foreground. The fall in India's exports and the rise in imports this year has influenced decisions including the abrogation of the open general license. The Economy Committee's proposals seem to have acquired urgency and the shifts in trade policy may have effects on Central revenues. The proposed reduction of imports has made food policy more important than ever and proposals for general use of bonemeal have been made. In the South, the plantations' experience has been examined at the Coonoor conference. References to costs and prices have been common, but planters have been reminded by the Premier that labour welfare and taxation are not likely to undergo early or substantial modification.

The Hindustan Times
2.9.49.

FRIDAY, SEPTEMBER 2, 1949

COMPENSATION FOR PROPERTY

After an exciting debate for about a month the Congress Constituent Assembly Party has approved the final draft of Article 24 of the Draft Constitution relating to payment of compensation for property acquired by the State. Even then the decision was not unanimous, as the draft was approved by 56 votes against 34. The Article in the final form in which it is likely to be introduced in the Constituent Assembly accepts the principles enunciated in Section 299 of the Government of India Act, 1935, regarding acquisition of property by the State, with a slight modification. These principles are: first, that no one shall be deprived of his property save by authority of law and, secondly, that any law for acquiring property for public purposes must provide for compensation and must either specify the amount of compensation to be paid or the principles on which and the manner in which compensation is to be determined and given. But while the 1935 Act made it obligatory to obtain the previous sanction of the Governor-General or the Governor as the case might be, so far as legislation about transfer to public ownership of any land was concerned, the present draft makes all State legislation whether with respect to land or commercial property subject to the final assent of the President.

A great deal of the controversy over the present draft centred round the question of zamindari abolition. The demand was made by those championing the cause of the zamindars that there should be no discrimination between agricultural and commercial property as regards the principles on which compensation was to be calculated and further that the question whether the compensation provided was fair and equitable must be made justiciable. On the other hand, the point of view of the provincial Governments was voiced by Pandit Govind Ballabh Pant and others who maintained that to make the issue justiciable would result in a vast number of cases being filed against the Government and judicial decisions on fair compensation might impose a burden which provincial finances could not bear. The present draft gets round the issues raised by providing that existing laws will not be affected by the principles laid down in the draft and that so far as legislation pending in State legislatures at the time of the commencement of the constitution is concerned, such law will be subject to the final assent of the President. But once this assent is given, "the principles and the manner prescribed in such law for determining and giving compensation shall not be questioned in a court of law."

The net result is that legislation already passed, namely, the Madras and Bihar Bills for the abolition of zamindari, will not be affected by the provisions in the Constitution. This will cut both ways as, though these acts cannot be challenged on the score that their provisions are inconsistent with the principles enunciated in the constitution, they cannot claim immunity from judicial proceedings which pending legislation at the time of the commencement of the constitution can claim under sub-clause 4 of the draft. As regards Bills which States legislatures may be considering at the time of the introduction of the constitution, the President takes the place of the Judiciary in seeing to it that the provision for compensation is both equitable and just, but once the President assents to the legislation, the issue is taken out of the jurisdiction of the courts. Thus though there will be no statutory discrimination between agricultural and commercial property, in practice the validity of existing zamindari abolition laws cannot be challenged and laws likely to be passed in the near future will have the safeguard of the President agreeing to them, though parties affected will not have the right to raise the issue in courts of law. As regards future schemes of nationalization, the Constitution will provide, first, that any such law must provide for compensation and must either fix the amount to be paid as compensation or the principles on which compensation is to be determined and the manner in which it is to be paid. It is obvious that where laws passed by the Union or by the States, subject to the assent of the President, do not provide for the actual amount of compensation to be paid, it will be open to affected parties to raise the issue in courts of law whether the actual compensation paid does or does not conform to the principles and procedure laid down, but not the issue whether the principles embodied in the legislation are fair and equitable. The ultimate result may well be that while there will be payment of compensation whenever property is acquired by the State for public purposes, the amount paid may not in all cases be such as will be considered by the affected parties fair and equitable. In the circumstances we agree with the opinion reported to be held by Dr Ambedkar and Mr Alladi Krishnaswamy Ayyar that the draft clause does not quite meet the ends of justice.

The Hindustan Times

WEDNESDAY, SEPTEMBER 7, 1949.

TRIBAL AREAS

The central point in the debates in the Constituent Assembly on Schedules V and VI relating to the administration of scheduled areas and scheduled tribes is the old one as to the future of the 25 million tribesmen in this country. In pre-independence days, there were two schools of thought among those interested in the welfare of these backward tribes. One school felt that these tribesmen by the slow process of education and contact with the rest of the people of the country should be raised to the latter's level and finally absorbed among the people. The second school felt that they represented a stage in human development and civilization for which the best that could happen was to leave them alone, to live their own lives under their own tribal laws and customs in their own protected areas, uninfluenced by the civilization of the rest of the country. With some logic, they pointed to the deterioration in their condition when there was uncontrolled immigration into tribal areas of non-tribesmen and the evils they brought in their train. All were agreed that to allow the more sophisticated people from urban areas to mix freely with tribesmen almost always resulted in the latter being exploited by the former. The tribesman under these conditions became the victim of disease and the money-lender and it was not long before he was evicted from the land from which he derived his livelihood.

There was no doubt the suspicion that the second school wanted to keep the tribesmen protected in complete isolation as anthropological specimens, just as wild life was preserved in national parks, irrespective of the human factor. Even under the old conditions, there were two ameliorative factors, namely the Christian missionaries who did a lot to improve their condition, though only out of motives of conversion, and the few Governmental and non-official agencies which honestly tried to better their lot in the real spirit of service. It is obvious that in free India where under adult suffrage, all tribesmen who have reached a certain age will become eligible to exercise the vote, the old conceptions about their role in our national life cannot hold good. As Mr Munshi pointed out in the Constituent Assembly, the policy behind the schedules was that the tribes should be raised in course of time to the level of other Indians and absorbed in the national life of the country as equal partners with the rest. But a clearly defined aim by itself was not enough. The more important question from a practical point of view was the extent to which the tribesmen could be associated with our national life, in the present stage of their development, and the extent to which they must be kept separated from others in order to allow them time to come up to their level. The sub-committee on Excluded and Partially Excluded Areas appointed by the Advisory Committee on Fundamental Rights of the Constituent Assembly had come to the conclusion that the old system of keeping them in excluded and partially excluded areas had proved a complete failure, as it had done the tribesmen no good. A compromise between isolation and full association had to be evolved and this is what the scheme envisaged in Schedules V and VI has sought to do.

Under Schedule V, administration of these areas and tribes will rest with the States (now provinces) but the Union will have power to give directions to the States as to their administration. Tribes Advisory Councils will be established in each State consisting of 20 members of whom three-fourths will be representatives of the tribes in the Legislative Assembly of the State and the rest other representatives of the tribes. The Councils will advise the Governor on such matters relating to the welfare and advancement of the tribes as are referred to them by him. Laws passed by Parliament or the State Legislature will be applicable to these areas only with such modifications as the Governor may make or not at all, as the Governor may direct. The Governor may also promulgate regulations which will have the force of law in these areas, especialy with regard to allotment and transfer of land, regulation of money-lending, etc. The latter regulations will be subject to the assent of the President. In order to preserve a certain amount of elasticity, Parliament has been given the right to amend the Schedule as though it were an ordinary law of the land and not an amendment of the constitution. Because of the peculiar conditions in Assam, with single tribes occupying fairly large areas, with highly democratic and mutually exclusive tribal organizations, separate arrangements on similar lines have been made for them under Schedule VI. The administrative scheme thus provided may be adequate for the objects for which it is conceived but, in the last resort, the development of tribal areas and the uplift of the scheduled tribes will depend on the amount of money we are prepared to spend and the number of workers imbued with the right spirit we can spare for the task. New India cannot afford to neglect the welfare of 25 million of her people.

TRIBESMEN IN THE REPUBLIC

THE Fifth and Sixth Schedules of the Draft Constitution, relating respectively to the administration of the Scheduled and Tribal Areas in the Indian Union, have been passed by the Constituent Assembly after a three-day debate which showed again the sharp cleavages that have always characterized public, even expert, opinion on tribal affairs. The changes made in the two Schedules, the Fifth being almost completely redrafted, had one aim: to increase Governors' powers vis-a-vis State legislatures, Advisory Councils in the Scheduled Areas, and District and Regional Councils in Assam.

With this intention we feel broadly in agreement. These Councils will be experimental bodies, their members strangers to the tasks set them; there was danger, particularly in some Scheduled Areas, of the initiative allowed under the original Draft being misused or not exercised vigorously enough. Moreover, elected tribal representatives are likely to be of the sophisticated type, out of touch with their more primitive fellows and susceptible to political influences from outside. The pressure of these influences would be increased were State legislatures given a bigger rôle in tribal affairs. Sugaring what might have seemed, at first sight to some members, a bitter pill, were clauses which permit Parliament to alter both Schedules without the fuss associated with changes to the Constitution. The House therefore was wise to accept an administrative blueprint closely modelled on realities, as the Drafting Committee and its advisers see them, and capable of quick modification if it does not work.

Nevertheless, Dr Ambedkar's statement that wherever the word Governor was used in the Schedules it meant he would act on the advice of his Ministers must have given some members pause. The Ministerial record in tribal matters in Assam and elsewhere has not been above reproach. The need for harmony between Governors and their Ministers for Tribal Affairs (where appointed) is now greater than before, though the former will have the whip-hand. Article 300, passed last June, says that the President can at any time appoint a commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled tribes; also that the executive power of the Union extends to giving directions to the States for drawing up and implementing schemes specified to be essential for the welfare of the tribes.

In sum, few will have cause to doubt that the two Schedules and related Articles are as good instruments as could have been fashioned at this stage to give effect to a policy which, in Mr K. M. Munshi's words, aims at protecting the tribes and encouraging them both to develop their own economy and take part in the larger life of the nation. Not all members of the Assembly saw the matter in this light, however; nor are all tribesmen likely to do so, particularly in Assam. Regional and District Councils were given wide powers under the original Draft of the Sixth Schedule. Some of these have been whittled down. The Nagas particularly, to whom additional promises of autonomy were made two years ago, may be puzzled and displeased. Mr Sri Prakasa and his officers may have some rather uneasy explanations to make.

The Hindu
12.9.49.

INTER-STATE TRADE

THE new Article 274 approved by the Constituent Assembly in place of Articles 243 to 245 in the Draft Constitution relating to Inter-State trade and commerce is a definite improvement on the original. It affirms, more precisely and categorically than the clauses in the Draft Constitution, that the primary authority in regard to the regulation of trade and commerce shall be the Union Parliament. The power of the States to impose "such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest" is subject to the limitation that no legislation on this matter can be initiated without the previous sanction of the President, which in the context means the Government of India. Parliament's powers to regulate commerce and trade between States or "within any part of India" are subject only to the limitation that the restrictions should be in public interest. Parliament is prohibited from discriminating between one State and another except when it is dealing with a situation arising from the scarcity of goods in any part of the country. The provision has obviously been prompted by the existing conditions in the country where the Centre has had to take action for controlling the trade in foodstuffs, cloth, iron and steel and other scarce commodities. The Draft Constitution had sought to make provision for this under "Temporary and Transitional Provisions," limiting the Centre's powers to regulate the trade in a specified list of commodities to five years. It may be, as Mr. T. T. Krishnamachari said, that the present shortages may continue for more than five years, although everyone in the country would fervently hope for a speedier termination of the regime of scarcity. It is perhaps just as well that in a Constitution, wherein provision is sought to be made for every conceivable contingency, the Centre's authority to regulate the trade in scarce commodities should not be left in doubt.

It was claimed in the Assembly that the Article as adopted provided a fair solution to a problem which had baffled constitutional experts in America, Australia and elsewhere. It must be remembered, however, that the problem in India, except for the Princely States, was much less complex than in the United States or Australia. Provincial autonomy here was only a stage in the process of devolution of power from an all-powerful Centre. And if at one stage political exigencies suggested the possibility of a Centre with strictly limited powers, the partition and its aftermath have changed the entire climate of opinion and the trend now is all towards a strong and all-embracing Centre. Powers which the American Congress and Administration acquired by a long process of judicial interpretation of the Inter-State commerce clause of the Constitution will be exercised by the Indian Parliament by the full authority of the Constitution. That does not, of course, eliminate the possibility of differences between the Centre and the States or between the citizen and either of them. But the scope for judicial intervention is limited. It may always be possible to argue as to what constitutes "public interest" and what constitutes "reasonable restrictions," but there is no reason to believe that in the interpretation of these terms the courts will be inclined to take a narrow view and restrict the authority of the State. The clause which forbids Parliament or a State legislature from making any law which discriminates between one State and another is undoubtedly a great safeguard whose value must be borne out by experience. The Article envisages the establishment of an authority on the model of the Inter-State Commerce Commission of the United States to deal with matters affecting inter-State commerce. The I.S.C.C. in America over the past six decades has grown into the leading governmental agency of economic control in the States. It is not to be expected that its Indian counterpart will occupy at any time anything like the position of the Inter-State Commerce Commission. For one thing, the trend of economic development has been different in the two countries. While regulation of railways and other forms of transport has been an important function of the I. S. C. C. from its inception, in India the railways are State-owned and railway policy or administration is unlikely to come under the purview of an Indian Commerce Commission. Obviously the latter's scope will be narrower, but American experience shows that once the Commission is set up its administrative independence as a quasi-judicial tribunal should be jealously maintained.

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Times of India 13-9.

Nation 15-9-49

This Constitution Is Not Suited To Our Genius

—THE SPEAKER

BOMBAY, Sept. 14—Mr. G. V. Mavlankar, Speaker of the Central Assembly stated in an interview here today that the constitution, which was now being passed, was "not suited to the genius of our people".

Mr. Mavlankar told the P.T.I. that the Western type of democracy based on elections on the basis of adult franchise was not suited to the Indian way of life".

Mr. Mavlankar said: "We are more spiritually minded people than the materialistic West. Often we ignore inroads on our rights and do not insist on enforcing our rights. Added to this is our character of trust and indifference to affairs round about us which makes us trust a benevolent rule and do not mind anything so long as it does not seriously interfere with our way of life. This being our genius, the Western type of democracy based on adult franchise is not quite suited to our way of life".

Mr. Mavlankar added: "The absence of political conscience and lethargy do not make our people quite active to take sufficient interest in the Government of the country. I think even with the best constitution we shall have no real independence or happiness if people do not possess the necessary qualities of political conscience and alertness, justice and readiness to suffer for justice".

Expressing his personal opinion on what the constitution of India should have been, Mr. Mavlankar said he would have preferred that only broad outlines of a constitution had been put forward, instead of writing it up completely. This, he said, would have given sufficient scope "for us to shape it according to the needs of the times or when we are more properly settled down".

"I believe in less laws and rules and more individual liberty. Contribution to the progress of our society should come from within and not without".

Mr. Mavlankar said he liked the democracy "of the type of House of Commons" because it suited to the outlook of that country. "Similarly we should evolve our constitution to suit our genius and way of life.—P.T.I.

COMPENSATION FOR PROPERTY ACQUIRED BY STATE

Constituent Assembly's Decision

DEBATE ON LANGUAGE DISPUTE

From Our Special Representative

NEW DELHI, September 12.

AMIDST unusually animated scenes, the Constituent Assembly today adopted by an overwhelming majority, after a 12-hour debate, Pandit Nehru's proposal giving powers to Parliament and legislatures of States to acquire private property on payment of compensation.

The proposal has a proviso which, in effect, means that justiciable compensation will not be extended to zamindari property in the United Provinces, Bihar and Madras.

The House also took up for consideration, after crossing a series of initial hurdles, the most controversial issue of the State language, riddled with over 300 amendments.

Mr. N. Gopalaswami Ayyangar moved the resolution, which provides that Hindi in the Devanagari script, with the international form of Indian numerals, should be Free India's national language and that English should continue to be in use during a transitional period of 15 years.

On the issue of property rights, the House accepted two amendments to Pandit Nehru's draft Article, which sought to extend the period of submission of the Madras and Bihar Zamindari Abolition Bills for certification by the President from 12 to 18 months and also exempt evacuee property from the right of acquisition.

ZAMINDAR MEMBERS' FIGHT

While the studied indifference on the part of Dr. B. R. Ambedkar, Chairman of the Drafting Committee, to these debates was the subject of comment in the lobby, Zamindar members who put up a spirited fight this morning, were either not present or their dissentient notes were drowned in the loud cheering which broke out on the announcement of the verdict by the President.

Mr. K. M. Munshi

The U. P. Premier, Pandit Govind Ballabh Pant, Mr. Alladi Krishnaswami Ayyar and Mr. K. M. Munshi spiritedly supported the Prime Minister's proposal, while the Maharajadhiraja of Darbhanga, the biggest landlord in India, and Mr. S h yamanandan Sahay expressed the zamindars' point of view vigorously.

"RUDE SHOCK"

The Maharaja of Darbhanga said that the Article gave him a "rude shock". He asked whether the proposal was not tainted with prejudice and bias created by the changed circumstances.

Replying to the debate, Mr. K. M. Munshi felt that the Prime Minister's proposal was a just compromise between different points of view. He declared that the country had committed itself to the abolition of zamindari two years ago and they could not go back on that. He suggested that justiciability could not be made applicable to all legislative measures alike and warned the House that there would be agrarian revolution if the Bills in the three provinces were not executed as they involved over seven crores of people and seven crores of acres, whose benefits were now being enjoyed by about 13,000 zamindars.

In a brief and objective speech, delivered with great dignity, Mr. Ayyangar explained how his compromise formula on the language issue reconciled different schools of thought. He asked the House to get over the spirit of "revivalism" and accept or reject his proposal as an integrated whole, with any verbal changes that might be considered necessary.

After a spirited debate in which Seth Govind Das, protagonist of pure Hindi, and Mr. Nazimuddin Ahmed, advocate of Sanskrit, participated, the House adjourned till tomorrow.

(Debate on compensation and the language issue on pages 8 and 9 respectively.)

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Bombay chronicle 14-9

A Numerical Hoax

The article in the draft constitution relating to the official language of the State has a recommendation relating to numerals which indicates that the drafting body has either a very keen sense of humour or none. It reads, "the form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals". The phrase "international form of Indian numerals" is a rich one which cannot but impress by its utter lack of meaning. A brief glance at the chapter on Numerals in the "Encyclopedia Britannica" will convince the doubting. "Several different claims have been made with respect to the origin of our present numerals, commonly called Arabic but preferably Hindu-Arabic...The country which first used, as far as we know, the largest number of our numeral forms is India. The 1, 4 and 8 are found in the Asoka inscriptions; 2, 4, 6, 7 and 9 appear in the Nana Ghat inscriptions; and the 2, 3, 4, 5, 6, 7 and 9 in the Nasik caves—all in forms that have considerable resemblance to our own". What does "international form" convey to one who bears this paragraph in mind? Nothing less than the present form by numbers are known the world over, the form which has evolved out of a long journey from India through Arabia to the rest of mankind. Or, if one looks at it another way, the form which has emerged from the development of modern methods of communication. Yet because a section of our Constituent Assembly members is obsessed by a fanatical, narrow-minded patriotism which has held up a decision on the language question for days and months, it is necessary to indulge in a rigmarole about "international form of Indian numerals." The world is intelligent enough to recognise the contribution of India to the evolution of the present number symbols but we have to be insistent on our rights even to the extent of infantile attitudes. Seth Govind Das surely struck a peculiarly low mark when he said that he could not understand why "devanagari" numerals should be objected to when the "devanagari" script was accepted; but he gave away the whole show. It was because of the ignorance of himself and men of his way of thinking that we have been made to swallow the ridiculous tautology of "international form of Indian numerals".

To many this will seem a small matter and certainly one that is not worth quarrelling over. But it reveals two attitudes which are fraught with great dangers to the future of this nation. In the first place, our leaders have been saying—and generally heard with great approval—that our national language must be one which keeps growing. There are visions conjured of borrowings from the scientific and technological field to the greater enrichment of Hindi. But here on the very threshold of decision we are faced with a ridiculous and perverse insistence on a crude revivalism, on the one hand, and a juvenile effort to appease the obscurantists by verbal manipulation. Recently, Dr. Morgan advised Indians to retain internationally recognized scientific terms. In the light of the numerals compromise which has been put before the nation, we fear that his advice was very much ahead of our times.

BHARAT

Wednesday, September 14, 1949

JUST COMPROMISE

THE CONSTITUENT Assembly has passed the Nehru Article relating to compensation, notwithstanding the desperate efforts of both conservative and radical elements to twist it out of shape. As Pandit Nehru rightly claimed, the Article represents "the only "and just compromise of the "various approaches to the "question." Its outstanding merit is, of course, the rejection of Proudhon's devastating dictum that all property is theft. It lays down in decisive language that "no person shall "be deprived of his property "save by authority of law." That law will not be the law of the jungle, nor of a totalitarian society, but of a democratic order which recognises the fundamental principle that no property should accrue to the State without its owner obtaining compensation. Indeed, the constitutional provision relating to compensation conforms to the statements of policy which the present Government have made from time to time. It will be recalled that the Government of India's industrial policy, announced on April 6, 1948, declared in categorical terms that, in the event of the State deciding to acquire any unit, the fundamental rights guaranteed by the Constitution "will be observed and compen-"sation awarded on a fair and "equitable basis." In an equally important statement of Government's policy towards foreign capital, the Prime Minister stated on April 6, this year, that "if and when foreign "enterprises are compulsorily "acquired, compensation will be "paid on a fair and equitable "basis."

The point for consideration, therefore, is not whether the Article is confiscatory in character, which it is not, but whether it is fair to property-owners who might be dispossessed in public interest. The assertion that every acquisition of property for public benefit should be justiciable ignores the basic fact that, no court of law, however supreme, can arrogate to itself the powers of what the Prime Minister called a "third chamber" and thus constitute itself into a supreme body—a right which belongs to Parliament as representing the sovereign will of the people. The conception of property rights is indeed an ever-changing doctrine and not an immutable dogma—a fact which was not adequately realised by critics in the Constituent Assembly. Dealing with the question of compensation, the Prime Minister invited the House to remember that equity "does not apply only to the "individual but to the commu-"nity also" and that "no indi-"vidual can override the ulti-"mate rights of the community "at large". Nevertheless it is satisfactory to note that the Article clearly lays down that justiciable compensation shall be paid in all cases of dispossession other than zamindari lands in certain provinces where the legislature has in the past few months decided upon a process of expropriation on varying bases of compensation.

Zamindari interests in the Constituent Assembly directed a verbal fusillade against the Article as being discriminatory. Apart from the fact that the Congress and all other sections of progressive opinion in India are irrevocably committed to the policy of eliminating parasites on land, the contention that lands in the possession of zamindars "belong" to them cannot be sustained either in history or in equity. They only possess the right to the revenues from zamindari lands and not the lands themselves, which belong to the State. In fact, compensation is payable in respect only of those rights. It is in the vital interests of India's teeming millions that the man who fructifies the soil and feeds the nation should not be exposed to the extortions and vagaries of a class whose only contribution to society is that of drones who have never done any good to the public hive. Both the Prime Minister and Pandit G. B. Pant stressed the international implications of land reform. To upset what has been done already and to deny the peasants the hopes that have been raised would lead to disastrous consequences. The Constitution can only provide for what is to happen hereafter, and as far as the future is concerned, unambiguous provision for justiciable compensation has been made. The Article thus treads on nobody's toes, and only blind prejudice can ignore its merits as a satisfactory and just solution to a complicated problem.

— ONEY.

INDIAN REPUBLIC

WEDNESDAY, SEPT. 14, 1949.

SOCIAL GOOD VS. INDIVIDUAL RIGHTS

One of the most contentious Articles in the draft Constitution dealing with the issue of payment of compensation for property acquired for public purposes was adopted by the Constituent Assembly after a heated debate. It was only to be expected, because while on the one hand there are the rights of an important—though a limited—section of the population to be considered, there are on the other hand the claims and requirements of the community and society to be taken into account and provided for. A reconciliation between the rights of the two sections might have appeared difficult to attain, but it had to be attained in the interests of social progress and national good. The Article in question has to be regarded from the fundamental standpoint that while individual rights have to be safeguarded they are subordinate to the demands of public interest and that social good supersedes individual rights whenever a conflict arises between the two. It is agreed that individual rights should not be expropriated in a forcible manner and as an act of vengeance. That is entirely foreign to the purpose of Indian *dharma* and the basis of the Indian Constitution. But the good of the many should override the interests of the few.

In its final form, Article 24 moved by Pandit Nehru provides for acquisition of private property in accordance with the law passed by the legislature. But it says that such acquisition would be unconstitutional unless the principles of compensation and the manner in which it should be paid are formulated and laid down by such law and the President has assented to it. It further takes cognisance of legislation for the acquisition of zamindari estates that would be pending in some states at the time of the commencement of the new Constitution and has laid it down that such measures should be reserved for the assent of the President which, if accorded, would place them outside the scope of justiciability. The Article also takes cognisance of legislation for the acquisition of zamindaris adopted in Madras and Bihar and any other such legislation adopted eighteen months prior to the commencement of the Constitution and lays down that the principles embodied in them regarding the payment of compensation cannot be challenged if the President certifies that those principles are in conformity with the general provisions laid down in clauses 1 and 2 of the Article.

The point whether a constitutional instrument like the draft Constitution should take notice of legislation already in existence and should exclude it from the purview of the courts was the main bone of contention in the debate. The objection on this ground gained point because clauses 4 and 5 discriminate between legislation for acquisition of private property rights pending at the time of the adoption of the Constitution and adopted some time prior to its commencement on the one hand and legislation for that purpose that would be adopted after its commencement. Should those whose interests are affected by the former measures of legislation be precluded from challenging their validity and the principles on which compensation is proposed to be paid under them, because they were placed on the statute book before the Constitution was passed or are on the way to being so placed? This point of view could not be wholly brushed aside as inconsequential and it found energetic expression in the Constituent Assembly debate. On the other hand, it was clear too that the supreme end and purpose of legislation for zamindari abolition in some provinces would be neutralised and its very foundations demolished if, on account of the justiciability of the principles of compensation incorporated therein, implementation of the reform is delayed or its benefits denied to the mass of the people. It is in this context that the argument advanced by Mr. Alladi Krishnaswami Iyer assumes unassailable validity. A law court, he said, cannot be regarded as a super legislature and it cannot be permitted to sit in judgment over the action of the legislature. A court's function is to administer the law not to review it or pass a judgment on the authority which made the law. The Union Parliament or a state legislature representing the supreme, sovereign will of the people in its own sphere, has the indefeasible right to pass a law and determine the principles of compensation and the manner of its payment to those whose properties are to be acquired for public purposes. The emphasis, however, is always and consistently on the latter phrase "public purpose," because Article 24 does not justify expropriation of private property in any sense of the term. The courts can interfere only if the compensation proposed by the legislature amounts to "a fraud" on the Constitution.

Pandit Nehru, in his introductory speech, defended the provisions of the Article from the larger perspective of social purpose and social good. A good law should clearly promote and no impede the attainment of that objective. Nor can any good law be enacted without reference to the times and circumstances in which it is enacted. If this paramount principle is ignored and if law does not keep pace with the times, the time-spirit will sweep away both law and Constitution. But our Constitution is being built up on the fundamental democratic principle of social justice as well, which does not preclude justice and equity to the individual or the minority as the case may be. Private property, whenever it has to be acquired, will have to be acquired according to law and only to promote a clearly ascertainable public and social purpose, not because of a penchant for undiluted expropriation or on the principle that might is right. The exclusion of zamindari abolition legislation in Madras, Bihar and U.P. from the purview of justiciability cannot be regarded as inequitable from this point of view. The provision of presidential assent in the case of pending legislation and of presidential certification in the case of legislation already adopted should be a satisfactory safeguard against state legislatures adopting laws on the compensation problem or state Governments formulating rules in that regard in a manner which will be a fraud on the fundamental principle as laid down in clauses 1 and 2 of Article 24 of the Constitution.

On the other hand, it must be remembered that one extreme demand leads to another and the possibility of protracted litigation on these matters is likely to evoke extreme demands from groups, not very anxious to respect private rights or support private property. An occasion may arise when Parliament or a state legislature itself may be dominated by these forces. It is as necessary to guard against such a contingency even as it will be wisdom to recognise its possibility. As we see it, the entire national economy of India at present and for the next few years should be built on a *via media* policy, steering clear of extremes—political and economic—in the interests of social and economic progress. Compromise is the password which would enable us to surmount our difficulties. It alone will ensure smooth progress and prevent revolutionary forces from gaining ascendancy. Article 24, just adopted by the Constituent Assembly, may seem inequitable or discriminatory in certain ways. It may at best be a clumsy compromise between different viewpoints. But it is the best in the circumstances.

14-9-49

Amrita Bazar Patrika

LANGUAGE CONTROVERSY

THE WHOLE THING IS AGAIN being thrown into the melting pot. The language controversy in India's Parliament has taken a turn for the worse on account of lack of agreement on what has come to be known as the Ambedkar-Ayyangar-Munshi formula. That formula accepted Hindi with Devnagri script as the State language. Certain provisions were, however, adopted for a period of fifteen years in order to make Hindi develop as a truly national language understood by the masses all over India and also as a language in which legal, scientific, economic ideas could be expressed with a degree of precision which admittedly Hindi does not possess at the present moment. English would continue to be used as the State language for a period of fifteen years but the President was authorised at the end of five years to make a survey of the extent of development of Hindi on the report of a Language Commission and take steps to supplant English by Hindi in as many spheres as possible. At the end of fifteen years the whole position would be reviewed and if it was found on the report of the Language Commission that Hindi had sufficiently developed it would outright take the position of English. Meanwhile, the Acts of the Legislature and the Ordinances would continue to be in the English language which also would be the language of the highest courts of the land. This compromise formula was reached after long discussion and sought to reflect as far as possible every shade of important opinion. But the orthodox section would not listen to it. The immediate cause of disagreement was their insistence on Hindi numerals as opposed to international numerals which Mr. Ayyangar pointed out had its origin in India and was, therefore, truly national. This disagreement torpedoed the compromise formula and took the whole controversy back to the point from where it started.

As we write, the debate has not yet ended and vote not taken. The Hindi section wanted to go the whole hog. There were more than 300 amendments to the original resolution and all points of view began to be urged on the basis of these amendments. One member wanted that the *status quo* should be maintained and the question left to be decided by Parliament at a later date. Another member appealed to the House to adopt Hindustani as the national language and cited the authority of Mahatma Gandhi in support of his contention. He would have Urdu script side by side with Devnagri. What decision will ultimately be reached it is difficult to predict though we believe the compromise formula would be carried by a majority. The orthodox Hindi section apparently believes that if only its particular point was accepted by a majority the whole of India would bow to it. To these members the President, Dr. Rajendra Prasad, addressed a much-needed warning. He said: "If it (the majority decision) does not meet with the approval of my considerable section of the people in the country, whether in the North or in the South, to implement the Constitution would become a most difficult problem". "The question of language is to be carried out", he added, "by the country as a whole".

In the heat and dust of the controversy certain basic facts are apt to be lost sight of. The orthodox Hindi section has assumed that the majority of the people of India speak Hindi. This is not the case. It is not also the case that from one end of Bihar to the other end of U. P. Hindi is the spoken language. There are not only many dialects of Hindi in this area but, what is of greater importance, the people in one part of the area do not understand the dialect of the people of another part. The number of people who speak pure Hindi is less than one-third the number who do not understand one word of Hindi. It is, therefore, sheer *'zubbardastism'* to foist the language of the minority on an overwhelming majority. Besides this, there are other well recognised tests by which the suitability of a language to be the national language of a multi-lingual nation can be ascertained. To attain the dignity of such a language it must have a rich literature and an almost perfect grammar and an adaptability for the expression of the most abstruse ideas. In these respects some of the Indian languages such as Bengali, Urdu and Marhati are far in advance of Hindi.

The fundamental question remains: Is it at all necessary that this great country in which about a dozen are major languages must have one State language which should also be the national language? We all know that in the U. S. S. R. there is no one State or national language. Yet it is a country which can challenge any other country of similar size in respect of national solidarity. Even in a small country like the Philippines there is no one State or national language. English and Spanish are the two foreign languages widely read in that country. The people, however, speak some 87 ethnic languages and dialects; but of these only six are highly developed with a considerable volume of printed literature to their credit: Tajalog, Visayan, Iloko, Panganisan, Pampango and Bikol. To-day Tajalog, English and Spanish, both understood and spoken widely in practically all parts of the country, are the official languages of the Philippines. English, in addition, remains as the medium of instruction throughout the whole educational system from the grades upto University level and Tajalog is taught as a subject in all schools and colleges. Most educated Filipinos speak fluent English and Spanish besides Tajalog, whatever the language of their province may be.

There is, therefore, no reason for hurry in the selection of one particular regional language as the national language for all India or even as a State language. There is much to be said in support of the view that the *status quo* should be maintained leaving the question to be decided by the Parliament at a future date. Meanwhile let there be a competition among leading regional languages to attain the highest possible standard of perfection. There is already a move in this direction. No particular language should be selected to be patronised and boomed and passed off, in spite of its admitted deficiencies, as the national language.

Free press Journal
14-9-

DECISION ON UNION LANGUAGE TODAY

PANDIT NEHRU SUPPORTS COMPROMISE DRAFT

(FREE PRESS OF INDIA)

NEW DELHI, September 13.

The debate over the official language of the Indian Union under the new constitution touched new heights of standards and emotional appeals by top-ranking proponents of both the viewpoints in the Constituent Assembly today in spite of the impassioned appeals by Mr. N. V. Gadgil and Dr. S. P. Mookherjee, Ministers of Central Government to the representatives of Hindi to rise to the height of the occasion and accept the compromise articles moved by Mr. N. Gopalaswami Ayyangar yesterday.

There was no indication till late this evening of any solution of this important problem.

Pandit Nehru himself had to speak during the afternoon session supporting the international numerals. He deprecated the authoritarian attitude of the members from Hindi areas and stated that it would be a backward looking and fatal approach if they insisted on their present attitude in the modern set-up of the world. India too, had to move with the times, he claimed.

Dr. Mookherjee and Mr. Gadgil strongly urged for the acceptance of Mr. Ayyangar's articles and declared that it would be a sad tragedy if the solid achievement of the agreement on the adoption of Hindi as the official language should be sacrificed for a small matter like the numerals.

The Central Provinces Premier Pandit Ravi Shanker Shukla thought that the spread of Hindi in provinces would be greatly handicapped by hurdles contained in the compromise articles like the continued use of English and the international numerals.

Behind the scene however, activity is still going on for a smooth solution of the language issue.

Tomorrow's session will provide the clue.

The PTI adds:

JAWAHARLAL'S WARNING

The Prime Minister, Pandit Jawaharlal Nehru, today gave his powerful support to the article on Hindi moved by Mr. N. Gopalaswami Ayyangar yesterday. 'We are on the threshold of a linguistic revolution in India,' said Pandit Nehru ... "give it the right direction, the right shape, the right mould, lest it should go wrong and betray us in the wrong direction."

The Prime Minister deprecated the "authoritarian approach "of some of the representatives from the Hindi-speaking areas and emphasised that a national language could not be imposed on an unwilling people. He said that Hindi would grow into a very great language if it included all the common elements which had gone to build it up for its "sister," Urdu, or the mixture Hindustani, and was allowed to grow normally. He strongly supported the use of international numerals for the purposes of the Union.

The article was also supported by two Cabinet Ministers, Dr. Shyama Prasad Mookherjee and Mr. N. V. Gadgil. Both of them appealed to Mr. Purshotamdas Tandon, leader of the group which wants the Union to adopt Devanagri numerals, to rise to the occasion and accept Mr. Ayyangar's compromise draft.

NO COMPULSION

Pandit Ravi Shankar Shukla, Premier of the Central Provinces, wanted that there should be no compulsion for the use of Hindi either in courts or in the matter of drafting bills in the Provinces. He was prepared to allow the use of international numerals for specified purposes of the Union but wanted Devanagri numerals to be recognised as an integral part of the Devanagri script.

Pandit Lakshmi Kant Maitra (West Bengal) urged that Sanskrit should be the official language of the Union. He was supported by Mr. Kuladhar Chaliha (Assam).

DIVERSE OPINIONS

Dr. Shyama Prasad Mookherjee said that personally he would also have preferred Sanskrit. Mr. Syed Karimuddin (Central Provinces) and Dr. P. Subbaroyan (Madras) appealed to the House in the name of Mahatma Gandhi to adopt Hindustani. Mr. Karimuddin wanted both the Persian and Devanagri scripts to be used and Dr. Subbaroyan favoured Roman. Mr. Frank Anthony, the Anglo-Indian leader, sponsored Hindi in the Roman script. Bengali found a champion in Mr. Satish Chandra Samanta (West Bengal). One of his arguments was that there were Bengali type-writers and a Bengali system of shorthand.

Premier of the Central Provinces, Mr. Ravi Shanker Shukla, advised South Indians to learn Hindi "quickly." Otherwise, he said, they might be "left behind." Mr. Ramalingam Chettiar (Madras) in what was perhaps the bitterest speech delivered by a non-Hindi speaking member so far, said that the way th Hindi-speaking people tried to dominate and dictate to the rest of the country was "galling." More than one member warned the House that it was the same spirit of intolerance that had led to the partition of India.

The Hindustan Times

WEDNESDAY, SEPTEMBER 14, 1949

ARTICLE 24

One subject which became a matter of acute controversy was disposed of by the Constituent Assembly on Monday when it passed Article 24 regarding compensation for property acquired by the State. Two amendments were made in the latest draft by the Assembly. One excluded the question of evacuee property from the purview of this Article and the second extended to the Madras and Bihar Zamindari Abolition Acts the benefits of non-justiciability given by Clause 4 of the Article to pending legislation at the commencement of the constitution, provided such legislation is certified by the President. Opposition to the Article came mainly from zamindari interests who found fault with it for laying down certain principles only to deny them to laws already passed or are pending at the time of the commencement of the constitution. If Clause 2 provided that laws for acquisition of property must provide for compensation for property taken possession of and either fix the amount of compensation or specify the principles on which, and the manner in which, compensation was to be determined and given, the opposition argued, why should pending legislation and laws already enacted be denied the test of application of this principle, and what was worse, the aggrieved parties denied the right to approach courts of justice for remedy? Why should Zamindari Abolition laws alone be discriminated against and made non-justiciable, while disputes regarding legislation about other forms of property could be challenged in courts of law?

Though Clauses 4 and 6 provide that legislation referred to in them shall not be called in question in any court on the ground of contravening the provisions of Clause 2 of this Article or Section 299 of the Act of 1935, the provisions do not completely shut out the right of approaching the courts to aggrieved parties. Courts in India have often held that merely because certain laws specifically lay down that they cannot be challenged in courts of law, they are not precluded from hearing the complaints of aggrieved parties and deciding for themselves that, in the particular circumstances of the case, the provisions of the law have been carried out, without considering the issues on which the jurisdiction of the courts is banned. But this is poor consolation, as what the zamindars feel is that they are not actually getting the compensation to which they are entitled and they are in addition precluded from challenging the provisions of the law in courts on grounds of equity or otherwise. Pandit Pant gave the most effective reply to these critics. The right to property is everywhere recognized as subject to the restrictive provisions of laws. Individual incomes are even now taxed at rates which can only be described as confiscatory while even capital levies are not unknown. Except for zamindars, all are agreed on the need for abolition of the zamindari system, even so authoritative a body as the Floud Commission, appointed by the old Bengal Government, considering such a measure as essential for real agrarian reform.

Once the principle of abolition is agreed to, the question of compensation is the practical one of the finances available with the provinces to carry through so necessary a reform. The U.P. Bill provides for graded compensation though in the form of rehabilitation grants to the smaller landowners. In the final analysis, zamindars themselves made this inevitable by contributing very little or nothing for increasing the productivity of the land under their care. It is too late in the day to reverse the tempo of reform. As for justiciability, no Government can contemplate the possibility of effective reform being paralysed by hundreds of thousands of cases filed in courts. The need for special provisions arose out of these considerations. It is, however, significant that so far as the general principles of compensation laid down in Clause 2 of the Article are concerned, they went practically uncriticized during the debate, except by the few who were evident believers in the Communist doctrine of confiscation without payment of compensation. This is sufficient proof that there is general recognition of the fairness of the principles laid down in the Article. The form in which the Article has been finally passed must have a reassuring effect on those who have been unduly alarmed by the somewhat loose talk about nationalization of industries. Whatever the future pattern of economy of the country, one thing is certain: there will be no expropriation without payment of compensation.

Statesman 14-9.

C.P. PREMIER'S FORMULA ON NUMERALS ISSUE

KEEN DEBATE IN ASSEMBLY ON NATIONAL LANGUAGE CLAUSE

PANDIT NEHRU'S SUPPORT FOR AYYANGAR DRAFT

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Tuesday.—While a new informal move for an agreement was being discussed outside, members of the Constituent Assembly today continued their keen debate over the question of India's national language, which began yesterday afternoon.

NO new proposals for a compromise are known to have been considered and the attempted understanding was confined only to an avoidance of a division over the voting after permitting full scope for the expression of different opinions.

There were, however, no signs until a late hour this evening of a coming rapprochement between the two main opposing groups, who base their stand, respectively, on the adoption of Hindi numerals and those in international usage

A vote is expected tomorrow and there is every indication that the section led by Seth Govind Das and Babu Purshottamdas Tandon will ask for a count, even though it is fairly obvious that international numerals enjoy stronger support in the House.

According to a suggestion made during this afternoon's debate by the CP Premier, Pandit Ravi Shankar Shukla, a compromise on the numerals question should be possible if both forms were permitted, to suit the convenience of provinces which might decide to adopt Hindi as their official language.

Except during an unnecessarily acrimonious speech by a U.P. representative, members did not fail to react with humour to suggestions for reform, particularly in regard to the claims of Sanskrit and the Roman script.

ROMAN SCRIPT PLEA

Both Mr Frank Anthony, the Anglo-Indian leader, and the former Madras Minister for Education and Home Affairs, Dr P. Subbaroyan, pleaded for the Roman script, the latter reminding his audience of the ugly developments in his province 12 years ago when the Government introduced Hindi in schools.

Two Bengal representatives, Dr Syama Prasad Mookerjee and Pandit L. K. Maitra, emphasized the need for tolerance and broad-mindedness. Pandit Maitra, who proposed Sanskrit as the national language, disclosed that his suggestion was the result of disagreement over numerals.

It was, however, the Prime Minister who made the most comprehensive review yet of the language question before the Assembly. He supported the proposals of Mr Gopalaswami Ayyangar and urged their acceptance as an integrated whole.

Pandit Nehru explained that, though English must continue as an important secondary language, its present status must be given to Hindi, by which he understood a medium of expression which was not divorced from the masses but a happy synthesis of India's composite culture.

Choice of language, he added, would determine the members' approach to the future. The past was a valuable possession, but if the people of India always looked back for inspiration, they would find it impossible to go forward. The Prime Minister was loudly cheered at the end of his speech.

(Agency report on page 5)

BHARAT

Wednesday, September 14, 1949

JUST COMPROMISE

THE CONSTITUENT Assembly has passed the Nehru Article relating to compensation notwithstanding the desperate efforts of both conservative and radical elements to twist it out of shape. As Pandit Nehru rightly claimed, the Article represents "the only "and just compromise of the "various approaches to the "question." Its outstanding merit is, of course, the rejection of Proudhon's devastating dictum that all property is theft. It lays down in decisive language that "no person shall "be deprived of his property "save by authority of law." That law will not be the law of the jungle, nor of a totalitarian society, but of a democratic order which recognises the fundamental principle that no property should accrue to the State without its owner obtaining compensation. Indeed, the constitutional provision relating to compensation conforms to the statements of policy which the present Government have made from time to time. It will be recalled that the Government of India's industrial policy, announced on April 6, 1948, declared in categorical terms that, in the event of the State deciding to acquire any unit, the fundamental rights guaranteed by the Constitution "will be observed and compen-"sation awarded on a fair and "equitable basis." In an equally important statement of Government's policy towards foreign capital, the Prime Minister stated on April 6, this year, that "if and when foreign "enterprises are compulsorily "acquired, compensation will be "paid on a fair and equitable "basis."

The point for consideration, therefore, is not whether the Article is confiscatory in character, which it is not, but whether it is fair to property-owners who might be dispossessed in public interest. The assertion that every acquisition of property for public benefit should be justiciable ignores the basic fact that, no court of law, however supreme, can arrogate to itself the powers of what the Prime Minister called a "third chamber" and thus constitute itself into a supreme body—a right which belongs to Parliament as representing the sovereign will of the people. The conception of property rights is indeed an ever-changing doctrine and not an immutable dogma—a fact which was not adequately realised by critics in the Constituent Assembly. Dealing with the question of compensation, the Prime Minister invited the House to remember that equity "does not apply only to the "individual but to the commu-"nity also" and that "no indi-"vidual can override the ulti-"mate rights of the community "at large". Nevertheless it is satisfactory to note that the Article clearly lays down that justiciable compensation shall be paid in all cases of dispossession other than zamindari lands in certain provinces where the legislature has in the past few months decided upon a process of expropriation on varying bases of compensation.

Zamindari interests in the Constituent Assembly directed a verbal fusillade against the Article as being discriminatory. Apart from the fact that the Congress and all other sections of progressive opinion in India are irrevocably committed to the policy of eliminating parasites on land, the contention that lands in the possession of zamindars "belong" to them cannot be sustained either in history or in equity. They only possess the right to the revenues from zamindari lands and not the lands themselves, which belong to the State. In fact, compensation is payable in respect only of those rights. It is in the vital interests of India's teeming millions that the man who fructifies the soil and feeds the nation should not be exposed to the extortions and vagaries of a class whose only contribution to society is that of drones who have never done any good to the public hive. Both the Prime Minister and Pandit G. B. Pant stressed the international implications of land reform. To upset what has been done already and to deny the peasants the hopes that have been raised would lead to disastrous consequences. The Constitution can only provide for what is to happen hereafter, and as far as the future is concerned, unambiguous provision for justiciable compensation has been made. The Article thus treads on nobody's toes, and only blind prejudice can ignore its merits as a satisfactory and just solution to a complicated problem.

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Bombay Chronicle 14.9

THE COMPENSATION CLAUSE

Considering the history and origins of the zamindari system, the zamindars might well consider themselves lucky to have got off with the compensation arrangement instead of being asked to face wholesale expropriation. In his illuminating treatise on "Problems of Zamindari and Land Tenure Reconstruction in India", Dr. P. N. Driver has urged some compensation to zamindars because it is necessary to retain their goodwill and secure their co-operation in reconstruction work. He believes that conceding some compensation, to which he is confident they are not the least entitled, will win their gratitude. This is a rather shortsighted view to take and one that leaves out of account the psychology of vested interests ever anxious as they are to exploit every advantage and to stake inordinate claims in the hope of extracting something at least. Dr. Driver himself observes, "A large number of the estates were created by auction-room methods and were not based on any real right to the land. Their origin can be traced to immoral cheating, forgery, corruption and even dacoity....There is overwhelming evidence to prove it. It is also true that the illegal exactions of the Zamindars in many parts of India have made zamindari stink in our nostrils and destroy much of the right to claim additional compensation". All this is fairly convincing not only as regards the past of the zamindars but also as relates to anything that might be hoped from them in the future as a measure of their "goodwill". Miniature feudal lords, they were a buffer for the rulers against the people and at once an institution based on ruthless exploitation. Under the changed conditions of this country, it is difficult to see how they can be enabled by the present Government of India.

The Congress, however, stood pledged to the policy of compensation and the Article of the Constitution moved on Saturday by Pandit Jawaharlal Nehru—comment has been pointed on the studied detachment of the drafting Committee, particularly of Dr. Ambedkar—ensures that the State will not take over property without compensating the owner. Bihar, Madras and the United Provinces which have already measures in hand for the abolition of the zamindari system, are specially protected by the two provisions governing bills and acts of a State existing before the commencement of the Constitution, but, if the other Provinces are keen on securing these benefits, they can get them if they move fast enough. With the majorities that the Congress possesses in provincial legislatures, it should be no great problem to have all three readings of a zamindari abolition bill passed in a month or even less. As a matter of fact, seeing that the details of compensation have been left to the legislature, the article under question is not as important as it was made out to be. Certainly those representing vested interests who loudly lamented the encroachment on their rights of private property, may well reserve their tears for a later and more appropriate occasion.

If anything, the article affirms the right of private property by insisting that no property shall be taken over by the State without compensation. This rather restricts the possibilities of any unit pursuing "nationalisation" without due regard to the rights of individuals and it is strange that this point has not been sufficiently noted in the debate except by Mr. B. Das of Orissa who lamented that apart from the three provinces mentioned earlier, none of the others will be able to abolish the zamindari system. Mr. Das is exaggerating but he has a better notion of the article than most of the other critics. A great deal of the rest of the discussion was thoroughly irrelevant and superfluous. Removing a misunderstanding, long cherished by persons from his province, the U.P. Premier Pandit Govind Vallabh Pant flatly told the Assembly that all sections of society which stood in the way of the people's progress and prosperity, would be "crushed". Singularly out of tune with the Article as this assurance is, it is a clarification that industrial exploiters need not expect to escape the vigilance of the Government any lighter than the agricultural lords have done.

The Tribune

Ambala Cantt., Sept. 15, 1949

RIGHT TO PROPERTY

While we have expressed our preference for the earlier formula evolved by Mr. Munshi and Pandit Pant on compensation for property compulsorily acquired by the State under which the State legislatures would have been the final authority to determine the question of compensation in respect of zamindari rights, we consider the Article on property passed by the Constituent Assembly, on the whole, a satisfactory compromise. Under the substitute Article moved by Pandit Nehru and adopted by the Constituent Assembly, no property movable or immovable is to be taken over by the State under any law unless it provides for compensation or specifies the principles on which compensation is to be determined. No provincial bill dealing with acquisition of property rights is to take effect till it has been assented to by the President. Thus two safeguards have been provided in this Article for the protection of property against legislation of an expropriatory character—the assent of the President to a provincial bill and judicial review. In order to ensure, however, that legislation pending in the provinces regarding the acquisition of zamindari rights is not made the subject of litigation, the Article provides that such measures pending before the legislatures at the time of the commencement of the new constitution will not be made the subject of judicial review if they have been assented to by the President. The Article also provides that any law of a State concerning acquisition of property rights passed 18 months before the new constitution started functioning may be submitted by the Governor to the President within three months of the commencement of the constitution and if it is certified by the President it shall not be called in question by any court of law on the ground that compensation given is not fair. The effect of these provisions will be that legislation to abolish landlordism in the U.P., Bihar and Madras will not become the subject of judicial review. There are many provinces and States, however, which have not undertaken legislation to abolish landlordism. In their case the acquisition of zamindari rights will become on the commencement of the new constitution a justiciable issue and may lead to needless complications. The Article provides two safeguards against expropriation of property by any State, namely, the President's power to withhold assent to a bill seeking to acquire property without providing for fair and equitable compensation and judicial review. The landlords consider the first safeguard more or less illusory. They attach greater importance to the second. Surely, the Government of India are far more competent to assess what is equitable compensation than the ordinary courts.

The discussion in the Constituent Assembly largely centred around the respective merits of judicial review and legislative process. Some speakers were anxious to leave the question of determining compensation entirely to the discretion of the legislatures, others wanted it to be subject to judicial review. Clause 2 of the Article on compensation lays down that no property, movable or immovable shall be taken possession of or acquired for public purposes, under any law, unless it provides for compensation for the property taken over by the State and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be given. Will the courts be competent to examine the question whether the principles on which compensation has been determined and the manner in which it is determined are equitable and fair? Both Mr. Ailadi Krishnaswami Ayyer and Mr. K. M. Munshi expressed their considered opinion that the courts were not competent to do so. It was an accepted principle of constitutional law, Mr. Ayyer argued, that when the legislature was invested with powers to pass laws in regard to a particular subject matter it was not for the courts to sit in judgment over the acts of the legislature. The courts would be competent to intervene, according to these jurists, only when the compensation was wholly illusory or when it was intended to be a fraud on the constitution. Pandit Nehru took the same view of the jurisdiction of the courts in compensation cases. We think Mr. Alladi Krishnaswami Ayyer and Mr. K. M. Munshi are taking too complacent a view in this matter. It is not the normal and accepted principle of constitutional law in the United States that judges should not sit in judgment over acts of the legislatures. Ever since Chief Justice Marshall developed the theory of judicial review the American courts have become the ultimate authority to determine as to what is just law. Is there any reason to believe that our courts will not develop a system of judicial review similar to that of the United States? Mr. Munshi warned the Zamindars that the Supreme Court Judges should not be thought to be a 'set of stupid people' who would apply the rule of market value in every case. But is Mr. Munshi quite sure that they would always accept the legislature's view of what is fair compensation? Will the courts not be competent to question the validity of an act of Parliament if they feel that the principles underlying the legislation are iniquitous and fraudulent?

In view of the fact that ordinary courts have proved stout champions of property in the past, men of property have generally preferred judicial to political safeguards. Landlords and industrialists demand that the question of compensation should be made a justiciable issue. The Article tries to meet their point of view to some extent. Under this Article the courts will be competent to see that compensation for property acquired is equitable—equitable to all parties, at any rate, to put it negatively, not illusory or nominal. But really the question of compensation is primarily the concern of the popularly elected legislatures since it involves more than a knowledge of law, it involves an ability to achieve a just balance between the claims of a person to certain rights and those of the community. No judge, however eminent, should be given the right to substitute his own judgment of what is good or feasible for the community, for that of the legislature. That would be a gross usurpation of powers. Pandit Nehru and others believe that the courts have not been given power to question the judgment of legislatures on compensation except in the extreme case of illusory compensation. Whether the courts will exercise their powers of judicial review only in extreme cases we are, however, not sure. Everything will depend on what view the courts take of their powers in this matter.

THE LEADER

THURSDAY, SEPTEMBER 15, 1949.

Intolerance is itself a form of violence and an obstacle to the growth of a true democratic spirit.—MAHATMA GANDHI.

PROPERTY

THE spokesmen of zamindars put up a vigorous fight in the Constituent Assembly against the article on compensation which was passed on Monday. The biggest of them—the Maharaja of Darbhanga—fought the hardest. This was expected. Describing 'the man of property' Galsworthy wrote, 'When a For-'syte was engaged, married, or 'born, the Forsytes were present; 'when a Forsyte died—but no 'Forsyte had as yet died; they 'did not die; death being con-'trary to their principles, they 'took precautions against it, the 'instinctive precautions of high-'ly vitalised persons who resent 'encroachments on their proper-'ty'. Unfortunately zamindars in India learned to take precautions against death too late. They contented themselves during the whole of their feudalistic career with setting up class organisations for the protection of their own interests and disregarded the interests of the nation. They lost perception of the simple truth that an institution which is inimical to the progress of the nation cannot endure. If they had adjusted themselves to changing circumstances, zamindaris might not have been abolished yet.

This is not to say that we entirely approve of the article on compensation or that we agree with every word Pt. Nehru and other supporters of the article uttered. Pt Nehru said, 'Agra-'rian reform on the biggest scale 'is something which cannot be 'stopped by any law or legisla-'ture and so far as the Congress 'is concerned it is committed 'wholly and completely and 100 'per cent. to the policy enunciat-'ed many years ago.' This is a very indiscreet statement. Agrarian reform is certainly essential. But ends cannot justify the means even though the Government may be 100 per cent. nationalist. The issue cannot be examined merely in terms of the abolition of zamindari. The point is that the rule of law must be upheld. In regard to the present article the Congress party in the Constituent Assembly accepted a compromise formula under which the principles and manner of compensation prescribed in legislation pending in the provincial legislatures at the commencement of the constitution and duly certified by the President for the state acquisition of property would not be justiciable. This had the effect of exempting the rate of compensation provided in the U. P. Zamindari Abolition Act from justiciability. But it was intended that the state acquisition of industries, land, and zamindaris to be made in the future, after the constitution comes into force, or acquisition under Acts which have already been passed by provincial legislatures, will have full justiciability. Now on representations made by the Madras and Bihar Governments a new clause is added to the articles concerning compensation which states that any law of a state enacted, not more than 18 months before the commencement of the constitution, and certified by the President within three months of the commencement of the constitution shall also not be justiciable. This is calculated to exempt the compensation provided in the Madras and Bihar Zamindari Abolition Acts from justiciability. We consider this procedure unfair. The constitution provides some fundamental rights. It will not be fair and just if these fundamental rights are abrogated by another provision in the constitution denying justiciability.

We are convinced that the abolition of zamindari is necessary but at the same time we feel that proper and just compensation should be paid to the zamindars. It is possible to devise a formula which, while providing fair and just compensation to the zamindars, would not impose an unbearable burden on the provincial finances. If the prevailing conditions of inflation do not make it possible to pay compensation in cash and the law courts would not accept compensation paid in bonds as fair and just the proper course is to slow down the process of abolition and not to deny the principle of justiciability. The only consequence of such action would be to shake the faith of people in the sanctity of private property. If the Congress Government can abrogate the justiciability of compensation paid to zamindars what is there to prevent a more extreme Government in the future from amending the constitution and either abrogating the justiciability of the rest of fundamental rights or providing for outright expropriation of property? Such a vicious principle should not be allowed to creep into the constitution. It may be a fact that law courts are more conservative but it is not a fact that they would unduly support the property rights of any class of people against the wishes of the legislature. If the provincial legislatures make laws which are within the framework of the constitution they have nothing to fear from the law courts. The judiciary and the legislature provide a check and counter-check on the work of the executive. This is the only basis on which a constitution can function on democratic lines. It is not wise or logical to deny justiciability on grounds of expediency. This undermines the very basis of a democratic constitution. Even from the point of view of expediency, to say nothing of morality, the compensation formula which implies the withdrawal of a fundamental right, is objectionable. It will affect future investment, both Indian and foreign, in economic development which is urgently needed and which the Government have been laying stress on.

Mirror of India 15-9.

A SWORD OF DAMOCLES

It is distressing that the framers of India's Constitution, who have so far acquitted themselves most creditably, should have allowed expediency to outweigh constitutional realism in the drafting of the vital clause on compensation for State-acquired property. Much confused thinking was evident in the somewhat acrid debate which preceded the adoption of the amended Article. This contains a proviso which excludes zamindari property in the United Provinces, Bihar and Madras from the benefit of judicial redress. Verbal accolades for the Congress Party on the fulfilment of its pledge to abolish zamindari holdings were as much beside the point as the suggestion that by making compensation justiciable the judiciary would be elevated to the status of a third revisionary chamber more powerful than Parliament. Admittedly designed to reconcile various points of view, the Article suffers from the defects inherent in most compromise solutions and was rendered even more nebulous and nugatory by the gloss which certain speakers, particularly Pandit Pant, sought to put on it.

If the right to private property is conceded—and this is constitutionally recognised as a fundamental right—the principle of compensation on acquisition by the State cannot logically be denied. Howsoever legal pundits might quibble, the term "compensation" implies adequate recompense which in all fairness must be justiciable. It is conceivable, of course, that the circumstances under which certain property-owners—for example, zamindars created under the Permanent Settlement regulations—hold and enjoy their estates are different from those under which the ordinary land-holder derives his title, and in this case compensation would obviously have to be qualified by the peculiar conditions prevailing. The same qualifications might operate in regard to certain other kinds of properties. But in all these instances the constitutional principles regulating the maintenance of individual and collective rights would serve as a yardstick for judicial determination, should resort to the law be envisaged. It would then be for the legislatures implementing these principles to justify on the basis of the Constitution whatever compensation terms they offer.

As drafted and interpreted, the relevant Article can hardly be described as a constitutional guarantee. According to clause 2 of the Article no property can be acquired "unless the law pro-"vides for compensation for "the property taken possession "of or acquired and either fixes "the amount of the compensa-"tion or specifies the prin-"ciples on which, and the "manner in which, the com-"pensation is to be deter-"mined, and given." How slender is the guarantee it contains is obvious from Pandit Nehru's declaration that eminent lawyers had advised Government that on a proper construction of this clause, "nor-"mally speaking, the judiciary "should not and does not come "in." If Pandit Nehru was inclined to be narrowly categorical, Pandit Pant was almost effusively expansive. According to him the Article would enable any legislature in the event of nationalising industry to pass laws and to frame principles which would be "invulnerable "in any court." The inference of the U P. Premier, read in conjunction with the Indian Prime Minister's interpretation, virtually deprives the Article of any constitutional content or meaning.

Indeed the rationale behind these rather vehement declarations veers dangerously close to Communist reasoning and tactics, for there is surely no difference between the non-justiciable acquisition of property by the legislature and ruthless expropriation by an omnipotent State. Mr. Munshi, in justifying the Article, confessed that the powers of the legislature had been extended. In effect this would leave free a majority party, whatever its political complexion, to so interpret the constitutional Article as to legislate all manner of private holdings out of existence. It might be argued that the special provisions regarding zamindari laws imply that justiciability is inherent in the clauses relating to other property but according to "eminent lawyers," reinforced by the Indian Prime Minister and Pandit Pant, that is not the case. It all goes to make confusion worse confounded. Capital, already sensitive, will be driven doubly shy by the Damocles' sword which the U. P. Premier has chosen to hold over the head of industry. Is it too much to hope that wiser and clearer counsels will prevail at the third reading of the Constitution Bill?

THE HINDU

FRIDAY, SEPTEMBER 16, 1949.

THE STATE LANGUAGE

AFTER a lengthy and sometimes acrimonious debate on the language of the Indian Union, the issue has been settled by a rather complex compromise. Amendments suggested by the Congress Assembly Party and by Mr. K. M. Munshi have been incorporated into the article in the Constitution drafted by Mr. N. Gopalaswami Ayyangar. The amendments provide that the official language will be Hindi in the Devanagari script and the form of numerals will be the international which is now in use over a very large part of India. For fifteen years English will still be used but the President during the period can allow the use of the Hindi language in addition to the English language for any official purpose and of the Hindi numerals in addition to the international kind. After fifteen years, Parliament will again legislate on the use of the English language and the use of the Hindi numerals. Another clause provides that after five years, the President shall appoint a committee representing various provincial languages to make recommendations about the progressive use of Hindi with due regard to the industrial, cultural and scientific advancement of India and the interests of the non-Hindi-speaking areas in the public services. Their report will be studied by a joint committee of both Houses of Parliament who will recommend action on it to the President. Since there are States (or provinces) which are ready to abandon English for official purposes, another amendment permits a State to prescribe, with the consent of the President, Hindi or any other language for use in High Courts (but not for judgments and decrees) and legislation, except that Acts, Orders, etc. must also be published in English. If two or more States wish to communicate with each other in Hindi, they will be allowed to do so. A final clause adds that it is to be the duty of the Union to promote the spread of Hindi and to develop the language so that it may serve to express the composite culture of India by assimilating the forms and expressions used in Hindustani and the other languages of India and drawing, wherever necessary or desirable for its vocabulary primarily on Sanskrit and secondarily on other languages.

There is thus something for everyone in the amended articles and the bitter conflict over the use of Devanagari numerals has been disposed of by postponing it to the future, when the language committees will presumably revive it in a different atmosphere. It was this controversy that revealed the narrow-mindedness of certain northern Hindi-speaking areas and called forth a warning from Pandit Nehru. He said that in some of the speeches he noticed the "tone of authoritarianism, very much the tone of the Hindi-speaking area being the centre of gravity of India and others being just the fringes." He commented that this was not only incorrect but a dangerous approach to the problem and that it would injure the development of the Hindi language. Pandit Nehru also pointed out that English could not be lightly cast overboard. It was a most important language that a large number of people would have to learn. It was now more important than when the British came to India because it was the nearest thing to an international language. The final clause in the Article that we have mentioned above shows that everyone is not satisfied that Hindi as it stands to-day is suitable for general use as a national language and Mr. N. Gopalaswami Ayyangar took care to point this out when he first introduced the draft in the Assembly. He pointed out that the language was not sufficiently developed and required modernisation. Not only does it vary from province to province but it does not contain the precise equivalents of the technical terms that are used in the various branches of learning and administration. Besides, the *lingua franca* of India must be in consonance with the speech habits of the provinces. It must shed such primitive features as grammatical gender which is unknown even in the Hindi areas such as eastern U. P. and Bihar. Fifteen years is likely to be the minimum rather than the maximum time in which Hindi can develop sufficiently in all these respects to become capable of being used for purposes of all-India communication. Northerners should also realise that the introduction of Hindi will operate as a severe handicap on southerners who have hitherto played so vital a part in the intellectual and political life of the country. Young men who in the future look further afield than their own town or province will have to master three languages—Hindi, English and their mother tongue and the difficulty is that this involves the learning of three different scripts as well which is not the case in Europe.

Indian Express

MADRAS: FRI., SEPT. 16, 1949

ONE LANGUAGE

ALL'S WELL THAT ENDS WELL

And the compromise formula adopted by the Constituent Assembly after an acrimonious debate in respect of India's future national language, must be deemed satisfactory from all points of view. It denotes, in essence, the triumph of sense over sentiment; though the champions of Hindi numerals may smart under a sense of frustration they have the consolation of having carried the country with them instead of dividing it on what, for all practical purposes, amounted to non-essentials. They have also the satisfaction of having got for the Devanagari form of numerals a position of equality with the English language to be adopted by Parliament (for such purposes as may be specified by law) after the initial period of 15 years. Nevertheless, one must deplore the fact that speakers like Babu Purushottam Das Tandon should have at all stressed the handicap involved to the Hindi-speaking population (constituting, as it does, but 10 crores out of 35 crores of the country's population) ignoring at the same time the handicap involved for the majority in adopting Hindi and the Devanagari script. The fact that the numerals adopted are international in character should have been taken as a measure of their acceptability; that they are also of Indian origin should not have left the least trace of doubt about such acceptability; if practical convenience alone were consulted, no other numerals should have been accepted.

The Constituent Assembly has further removed an obvious inconsistency in respect of the official language of a State, which we had occasion to point out on Wednesday. As we remarked then, the concession allowed in clause (c) of Article 301, namely that a State is free to adopt its regional language or Hindi for all or any of the official purposes of that State, was virtually cancelled out by the subsequent clause (f) inasmuch as all proceedings of the Supreme Court and every High Court and the authoritative texts of various documents, Bills, Ordinances, Rules etc., were decreed to be in English. By adding sections (3) and (3) to the text now, the Assembly has permitted a State to prescribe, with the consent of the President, the use of Hindi or any other language recognised for official purposes in the State for proceedings in its High Court, other than judgments, decrees and orders, and further that Bills, Acts, Ordinances and Orders having the force of law may be issued in the language so prescribed, provided a translation in English testified by the Governor or the Ruler is also published to be treated as authoritative. And by including Sanskrit in the schedule of languages represented in the Commission to be appointed by the President five years after the commencement of the Constitution, the claims of the classical language are automatically recognised. Mr. Gopalaswami Ayyangar furnished a very vital point when he commended Mr. Krishnamurthi Rao's suggestion of an academy to make a review of the use of words in various parts of the country so as to modernise and popularise Hindi. Such a step is implicit in the directive contained in the Article itself whereby the State is enjoined "to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment," etc.

Hindi in Devanagari script is thus installed as India's national language, though its enforcement might take some time for obvious reasons. Hindustani, which was originally sponsored by the Congress Working Committee at the inspiration of Mahatma Gandhi, has been given up ultimately, partly due to its Persian orthography. English will continue in vogue till such time as Hindi is capable of replacing it Agreement on these points was reached earlier and constituted 95 per cent of the decision as Pandit Nehru had remarked; if the remaining 5 per cent defied solution for a time owing to a wholly unnecessary controversy over the numerals, that too has been settled amicably. In any case, the decision taken now is final since it has been embodied in the country's constitution. The effort hereafter should be to implement the decision, and provided the legislature and the government under the new constitution, when they come into being, apply their minds to the task in right earnest, India's hope of having a common language of her own can be easily realised within a specified period.

Indian News Chronicle

17.9.49.

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SATURDAY, SEPTEMBER 17, 1949

DANGER TO PERSONAL FREEDOM

The two days' debate in the Constituent Assembly on the provisions relating to personal liberty has been no more than a pale reflection of the fears and anxieties of the public outside regarding the guarantee of basic freedoms in the new Constitution. Every one will agree with Dr. Ambedkar—though he himself did not realise it at the time he first moved the Fundamental Rights clauses—that no part of the Draft Constitution had been criticised so violently by the public as Article 15. No emergency reasoning could reconcile the people to an Article which in its sponsor's own words gave "a carte blanche to Parliament to make provision for the arrest of any persons under any circumstances that it might deem fit," and threatened to deprive them of the right of habeas corpus and of protection against detention without trial. And few will commend the Drafting Committee's judgment now when Dr. Ambedkar claims on its behalf that the new Article—15 (A)—makes sufficient amends for the Article that preceded it. At least a dozen speakers in the Constituent Assembly showed how the new Article in no way secured to the citizen that protection against arbitrary arrest, detention without trial, harassing search of his house and cramping restrictions on his movement or freedom of speech which Article 15 had denied him. For the core of that Article was in the power it gave to legislatures to pass any tyrannical law restricting the personal liberty of the citizen—even his right of habeas corpus—in any way they liked. No doubt the new Article restricts somewhat the powers of the legislatures so far as laws dealing with personal liberty are concerned in certain categories of cases, but it still leaves them absolutely free to pass laws in the name of "preventive detention" which mock at the right of habeas corpus and free the executive of any obligation even to inform the detenus as to the exact grounds on which they are detained.

The only valid test to judge the new Article is to find out how far, if enforced, it will invalidate the existing Public Security Acts and other laws which give to the Executive the right of arbitrary arrest and detention for long periods without trial. If this test is applied, it will be found that, though apparently these laws will have to be amended in certain ways so as to provide for informing the accused immediately on their arrest of the charges against them and of limiting the period of detention to three months in most cases, all these restrictions can be easily bypassed by legislation designed to deal with "preventive detention". It will still be possible to pass laws which empower the Executive to detain even for periods longer than three months any persons who in its opinion are likely to act in any manner prejudicial to public safety. The defenders of the Article pleaded that powers of preventive detention were now considered essential by most of the democratic States. But they failed to point out that such powers were obtained by the Government in countries like Britain and the United States only during grave emergencies, and then too they provided for the fullest opportunities to the accused to defend himself and were used most sparingly. Article 15 (A) provides for no safeguard against laws which while allegedly aimed to secure "preventive detention" are really motivated by the desire to "screen executive action from judicial examination so that public liberty can be suppressed without criticism or protest from the judiciary." If the aim of the Constitution-makers was only to provide the Executive with adequate powers to prevent certain people from committing any acts prejudicial to public safety, that object could have been democratically secured without encroaching on the citizen's right of habeas corpus. As a matter of fact, even without the emergency laws the Executive has the power to require people to execute bonds for keeping the peace. The other provisions regarding "preventive detention" are not preventive so much as punitive. They are based on fear of the people—a fear more subversive of democracy than any danger which the denial of the right of habeas corpus is meant to safeguard against.

As for those sponsors of the new Article who say that there are no grounds for the fear that laws for "preventive detention" doing away with the right of habeas corpus will be misused, all one can do is to refer them to the record of the various Governments in the last two years and the severest censure by almost every High Court in the country of the gross misuse of its powers of arrest and detention by the Executive. There are cases on record where paralytics have been detained on the ground that they were likely to get training in fire-arms (with their paralysed limbs!), where legislators—as was pointed out by Dr. Punjabrao Deshmukh—have been detained for nearly a year without their being told of the grounds for their detention, where reasons have been adduced for detention which made the Chief Justice of the Calcutta High Court exclaim, "well, if these are reasonable grounds, then I suppose you can arrest any one at any time anywhere in India" and where these powers have been openly used to crush political opposition. The experience of the last two years should have been a sharp warning to the Constituent Assembly against the danger of leaving any loophole in the Fundamental Rights clauses which might enable the legislatures to tamper with those rights. The Constituent Assembly, however, has preferred not to heed that danger, compromising not only the basic democratic rights of the citizen but weakening the very foundations on which this young democratic State is going to be built.

National Herald
18.9.49.

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PREVENTIVE DETENTION

The needs of security, the needs of individual liberty, and the needs of expanding social conscience have been often discussed by us in these columns and nobody can accuse us of want of understanding. But even balancing all these needs we find the new article 15 A of the Draft Constitution of India, which has been passed by the Constituent Assembly, to be extremely unsatisfactory. The question of preventive detention is important to the state as well as to the individual but more so as between the government of the day and the forces of opposition. The article is, therefore, not only of individual or social importance but of political importance. The principle that should be kept in mind is that in defining the law of preventive detention, respect for law should not be undermined and opposition driven to defiance of law. If constitutional methods are to be firmly established the realization must come that every available remedy is there within the constitution. It should also be obvious to the party in power that the constitution may act as a boomerang and be turned against it the moment it slips from power. A dispassionate view of the problem has been made difficult not only by the absence of organized political parties from the Constituent Assembly but by the emergency natural to the birth of a new state which should not inhere permanently either in actuality or in the minds of the people. Some of the powers provided for in the constitution for strengthening the state may seem necessary in this time of emergency but the aim should be not to perpetuate emergency but to provide for normal exercise of rights and liberties in normal times.

The extent of personal liberty was laid down in article 15 and there was much discussion about the phrase "according to procedure established by law" which was substituted for the earlier preference "due process of law". We were doubtful of the utility of the American precedent, because American case law had made "due process" a guarantee against advance of social liberties. In proposing article 15 A Dr. Ambedkar explained that the object was to explain article 15 and enlarge the liberties embedded in it. In other words the idea is to curtail the powers of the parliament in making laws under which the procedure curtailing personal liberty is to be laid down. It is a laudable object, but, unless article 15 A was liberally conceived, it would mean that it might prevent the parliament in future from taking its own liberal view of liberty, without amendment of the constitution. Under the ordinary law no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to counsel and to be defended by a legal practitioner of his choice. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours and no person shall be detained in custody beyond such period without the authority of a magistrate. It may be promptly observed here that the safeguard is useless unless the subordinate judiciary is separated from the executive and the magistrate can be said to exercise judicial discretion. But even this safeguard and the right to counsel are not to be allowed to an enemy alien or to any person who is arrested under any law providing for preventive detention. And it is on the nature of this preventive detention that most of the discussion in the Constituent Assembly was rightly concentrated.

Some limitation on the power of preventive detention is laid down in the article. A person should not be detained for a longer period than three months unless (a) an advisory board consisting of persons who are or have been or are qualified to be appointed as judges of a high court has reported before the expiry of the period of three months that there is in its opinion sufficient cause for such detention or (b) such person is detained in accordance with the provisions of any law made by the parliament under clause 4 of the article, which gives the parliament the power to prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained. The new article does little to constrain the parliament. The parliament can make the period of detention longer than three months and obviously it cannot make it less without article 15 A being amended. The parliament may also fix the maximum period of detention which under the article is not laid down. As the article stands any person can be detained for three months, no person can be detained for more than three months unless an advisory board reports that there is sufficient cause for such detention, and any person can be detained for an indefinite period once the advisory board gives the certificate. The opposition to this article came from those who considered that three months was too long a period for detention without showing cause and that the safeguard of an advisory board was illusory because it could be no substitute for a trial. Various amendments were proposed to reduce the period of three months, to specify more clearly the nature of the advisory board, to give the detenu the right of knowing the charges fully and presenting his case properly and with the right of cross-examination. Of the amendments moved Mr. Patakar's seemed to be the best. He proposed first that no person shall be detained without being informed of the ground for his arrest not "as soon as may be" but within 24 hours; secondly, the person detained would have to be produced before a magistrate of the first class and not any magistrate which would include second and third class magistrates and honorary magistrates; thirdly, the law of detention should be uniform throughout the country; and, fourthly, the advisory board should consist only of judges of high courts.

It is obvious that if judicial fairness is to be secured in the advisory board's examination of each case of detention, the board should consist only of high court judges. It was argued in the Constituent Assembly by even a person of Mr. Alladi Krishnaswami Ayyar's standing that there would be greater scope for securing talent if persons who were qualified to be appointed as judges of a high court could also be employed. This would amount to allowing the provincial governments to exploit the vagueness of the provision and secure persons whose independence cannot be taken for granted. The importance of only having high court judges is that they cease to be dependent for favours. We still think that with experience the clause will have to be amended. The period of three months again gives enough scope for harassment when every minute of a person's liberty is to be accounted for and there is bound to be widespread dissatisfaction with this provision. Dr. Ambedkar made a concession only in two respects and that was to lay down through a new clause that the authority making an order of detention shall, as soon as may be, communicate to the detenu the ground on which the order has been made and afford him the earliest opportunity of making a representation against the order and to expand clause 4 saying that the parliament may lay down the procedure for the advisory boards. The phrase, "as soon as may be", is not enough to compel authorities to disclose without undue delay the grounds of detention which should be obvious to them when passing orders. It should be easy for any authority to make a present of the grounds of detention to the detenu even at the time of arrest. With regard to representation, the safeguard will be illusory unless the Government and public opinion see to it that subordinate authorities observe it in a liberal spirit and unless the right of cross-examination is conceded, as Dr. Ambedkar declared it should be.

The Hindustan Times
19.9.49.

AMENDMENT OF THE CONSTITUTION

Written constitutions have necessarily to provide means by which they could be amended in the future, if the need should arise. And since constitutions are fundamental laws of the land, it is more or less universally recognized that the process of amending the constitution should not be as easy as enactment of the ordinary laws of the land. In England the distinction between Fundamental law and ordinary law does not exist for the simple reason that there is no written constitution. The procedure for amendment of the constitution there is the same as for amendment of ordinary laws. But a federal constitution must, necessarily, be a written one, as it involves a clear demarcation of the powers of the Federation and the units. Federation in India became inevitable as soon as the demand for freedom became insistent, as there were elements in our national life which were extremely jealous of their local or sectional autonomy. As a matter of fact, the federal idea became practical politics as soon as the Indian Princes announced their readiness to join an Indian Federation at the first Round Table Conference. Muslim communalism was another factor which made for a federal solution, as it was anxious to retain autonomous power wherever possible in the provinces. It is true that with the partition of the country and the practical disappearance of States as separate political entities, the main reasons for acceptance of the federal idea have disappeared. This change is reflected in the new constitution in that there will now be a wider concentration of powers at the Centre than was considered possible at one time. But there are two other factors which make it necessary to maintain the federal form. In spite of modern communications, the size of the country will impose a great strain on any over-centralized administration. While the Centre may retain all power necessary to co-ordinate policy, executive government in several spheres must, in the interests both of efficiency and responsiveness to public opinion, rest in the provinces. Secondly, the fact that the country is split into several language groups has to be reflected in the constitution and this is possible only in a federal form of government.

Taking into consideration all these factors, there can be no doubt that the revised Article 304 passed by the Constituent Assembly on Saturday strikes a middle course. The provisions are neither too rigid, making amendment of the constitution so difficult as to become impossible, nor so flexible as to make amendment easy with every shift and change of public opinion. Procedure for amendment of the constitution falls into three categories. In certain matters like creation and reconstitution of States, creation or abolition of second chambers in the States, constitution of Centrally-administered areas, etc., the constitution can be amended by Parliament by a simple majority. In the second category come Articles which can be amended by Parliament by a majority of the total membership of each House and a majority of not less than two-thirds of the members of that House present and voting. In the last category come important provisions of the constitution like election of the President, executive power of the Union and States, the Supreme Court, the High Courts, distribution of legislative power and representation of States in Parliament. For amending these articles, in addition to the Parliamentary majorities needed for the second category of Articles, there must be ratification by the legislatures of one half of the units, namely, the present States and provinces.

One point raised during the debate was whether amendment should not be made easy during the first few years of the new constitution. It was argued that practical working might reveal defects the removal of which should not be subject to the complicated procedure laid down for amending the constitution. An amendment on these lines had earlier been given notice of by the Prime Minister but was not moved. The new constitution has received as much consideration as it was possible to give it by the best brains in the country. It was no empty boast of Dr. Ambedkar that the principles embodied in the constitution were as good as, if not better than, the principles embodied in other parliamentary constitutions. The problem was whether the inconvenience of maintenance of the same procedure during the initial years would outweigh the dangers of too flippant and too radical amendments during these years. Except on minor points, the constitution which will emerge out of the present discussions is likely to be adequate to all our national needs for as long ahead as we can foresee. Amateurish tampering with it during the early years may irredeemably harm its essential structure and make it an uncertain instrument for the moulding of our political evolution. The procedure ultimately decided upon provides for easy amendment where the need for amendment is universally felt or it concerns parts of the constitution not fundamental to our political structure. Within two years after the attainment of political freedom, the country has reached a stage of political stability which is rightly admired by the world. We shall be wrong to throw caution to the winds and open the doors to every passing gust of public opinion. Every change must be duly consolidated before we take the next step, if progress is to be steady and certain. Continuous change may land us in disaster before we are aware of it.

21-9-49

NATIONAL HERALD

THE AMENDING PROCESS

It would be an erroneous view that, because India's new constitution will be a written one, it will be necessarily rigid. The degree of rigidity will be determined by the amending process which is necessarily laid down in every written constitution. Amendments to a constitution, in the absence of the absolute supremacy of the parliament as in the case of Britain, can be carried out through a referendum, which is an outmoded method and dangerous in the hands of dictators, a special convention, which is equal to the resummoning of the constituent assembly, the legislature with a stipulated majority, or the constituent units in the case of a federation. The last two methods are generally used and in the case of India the supremacy of the parliament has been retained in certain matters introducing thereby a greater flexibility than was thought of at first. The best proof of the flexibility of the draft constitution lies in the fact that there is nothing like a fundamental law of the constitution which is characteristic of most written and rigid constitutions. For instance, the American constitution requires that, by no process of amendment, shall any state, without its own consent, "be deprived of its equal suffrage in the Senate", and the two most recent rigid constitutions, that of the Fourth French Republic of 1946 and that of the Italian Republic of 1947, both contain a clause stating that the republican form of government cannot be the subject of an amending proposal. There are no such restrictions in India's draft constitution except that certain provisions cannot be tampered with for a certain period.

The device now adopted for the amending process is quite ingenious. The various articles of the constitution have been divided into three categories and three kinds of amendments have been provided for. The first class of articles would be open to amendment by a simple majority of the parliament and though this is spread over many articles and is not specified in article 304, it is a very important feature and should not be lost sight of. For instance, the parliament can by a simple majority create new states, reconstitute the existing states, abolish upper chambers in the states where they exist, create upper chambers in the states where they do not exist, make or modify the constitution for centrally-administered areas, make changes in the administration and control of scheduled areas and scheduled tribes and administration of the tribal areas in Assam. If members of the Constituent Assembly who were keen on flexibility had devoted their energy to studying what other articles of the constitution would be brought under this amending process they could have served their purpose better. The second kind of amendments relate to articles which require for their amendment an amending bill passed in each house by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting and receiving the assent of the president of the union. The third set of amendments come in the shape of a proviso to this rule. In this category are placed matters dealing with the election of the president, the manner of election of the president, the executive power of the union and states, the supreme court, the high courts, the representation of states in the parliament and the distribution of legislative powers. The provisions of article 304 are also subject to this amending process. The amendment in these cases will require to be ratified by the legislatures of not less than one half of the states for the time being specified in parts I and III of the first schedule by resolutions to that effect passed by those legislatures before the bill making provision for such amendment is presented to the president for assent. It would mean that these are matters which are fundamental to the constituent states whose agreement to a federal union on this basis is implied. But here again some flexibility is maintained if we compare the provisions with those of some other modern constitutions. Normally the amending process for the greatest part of the constitution depends on a majority of each house and a two-thirds majority of the members present and voting.

The balance between the executive, the judiciary and the legislature which is fundamental to written constitutions has been a problem of constitution-making in many countries. In the constitution of the Fourth French Republic amendment is left to the initiative of the National Assembly but any proposal for revision has to be examined by a small constitutional committee. If the proposed amendment is passed on second reading by a two-thirds majority in the National Assembly or by a three-fifths majority in each of the chambers, then within eight days of its adoption by the parliament it must be promulgated by the president of the republic. But if it is adopted only by an absolute majority in each chamber it must be submitted to a referendum. Notable restrictions are that any proposed amendment touching the existence of the council of the republic cannot be accomplished without the consent of the council itself or by recourse to a referendum and that, as we have noticed, the republican form of government cannot be the subject of a proposal for revision. The method of amendments in the Italian constitution of 1947 is similar. The initiative belongs to the government and to the parliament, the law of constitutional revision must be carried out in each chamber in two readings, with an interval of not less than three months between them and requires at the second reading an absolute majority of the members of the house. The law must be submitted to a referendum if within three months of its publication demand is made to that effect by one-fifth of the members of either chamber or by 500,000 voters or by six regional councils but this condition does not hold if the law is approved at the second reading by a majority of two-thirds of the members of each chamber. These two constitutions provide interesting study because they were made under the stress and strain of new freedom. While they differ from ours in giving a voice to the people, they would have been more rigid if they were federal constitutions. Among the British dominions, the Canadian constitution states the powers of government granted to the provinces and leaves the rest to the dominion government and the restriction upon the dominion parliament in the matter of constitutional amendment is measured by the powers expressly granted to the provinces which the federal authority cannot touch without their consent. In Australia any law proposing an amendment passed by both houses must be submitted to the electors of the house of representatives in each state to vote upon it or, if any such law is passed by one house and rejected by the other, and is passed again by the same house after the passage of three months or in the next session, the Governor-General may submit it, with or without amendment by the house which objects to it, to a referendum. If then it is accepted by a majority of the electors in a majority of states and by a majority of all the electors voting it becomes law. In Switzerland the referendum and the initiative figure prominently and in every case the final sanction of the people is an indispensable condition. In the most rigid of constitutions, the U.S. constitution, amendments have to be proposed by two-thirds of all members of each house or by the legislatures of two-thirds of the states and have to be agreed to by three-fourths of the states. The number of states having grown from 13 to 48, the amending process has become difficult because no amendment can now be adopted without the concurrence of 36 states. It will be seen that in the Indian constitution popular sanction is not necessary for amendment and, therefore, much will depend upon the character of the legislators. The second striking feature is that even with regard to amendments of a fundamental nature, the consent of half of the states is enough, thereby emphasizing the unitary character of the constitution. If anything it is on the side of flexibility and not of rigidity. The rigidity can come only if adult suffrage will aid the forces of conservatism and thus fail to amend the constitution where it requires to be amended for the sake of progress.

Times of India 8-10-49

GENERAL ELECTIONS IN WINTER OF 1950

Dr. Prasad's Announcement In Constituent Assembly

From Our Special Representative

NEW DELHI, October 7.

GENERAL elections would be held in the winter of 1950-51, announced Dr. Rajendra Prasad in the Constituent Assembly today when it resumed consideration of the transitional provisions in the Draft Constitution.

The President had to intervene to make the above announcement, following the storm raised in the House by a casual statement made by Mr. K. Santhanam, that some members of the House were trying to perpetuate themselves and prevent the early dissolution of the House, lest they should fail in the next elections.

A number of members objected to alleged aspersions in Mr. Santhanam's statement and suggested that it was the Cabinet's responsibility to take steps for holding early elections. Mr. Ananthasayanam Ayyangar came to the rescue of Mr. Santhanam and said that in the absence of any provision for the dissolution of the Assemblies, there was always the risk of their continued existence.

The President announced that steps had already been taken by the Secretariat to implement the resolution passed by the House in January this year for holding General Elections as early as possible in 1950. Some difficulty had, however, been experienced in view of the magnitude of the task of printing the names of between 170 and 180 million adult voters, but information from the Provinces encouraged the hope that there would not be any undue delay.

Some members suggested the inclusion of a special provision to ensure the appointment of a new Ministry at the commencement of the new Constitution.

Dr. B. R. Ambedkar pointed out that during the transition period, the Prime Minister would have the right to ask for a vote of confidence and the Legislature would also be free to pass a vote of no-confidence if a change in the Ministry was desired. He repudiated the suggestion that the present Cabinet was making a "surreptitious attempt to smuggle itself."

Other articles adopted by the House referred to the election of the Interim President of the Union and the vesting of powers in the President to adapt, modify, add to or omit from the Constitution in order to resolve any unforeseen difficulties have pondered long and deeply over during the transition period.

(*Details on page 13*)

The Nation

SUNDAY, October 9, 1949.

A NATIONAL DISASTER

HOW LONG WILL "FREE" India be ruled under a constitution which was specially devised by British imperialists? The question is suggested by the series of transitional provisions with which the Nehru Government have armed themselves to prolong their reactionary administration. That these transitional provisions are not as innocent as Dr. Ambedkar wanted the public to believe should be made clear. Under the guise of making provision for the period of "transition", Dr. Ambedkar has provided for the continuance of present Ministries and Legislatures in the Centre and the provinces for an indefinite period. As it is difficult to perpetuate the Ministries without extending the same privileges to the Legislatures, Dr. Ambedkar introduced Article 312 to give fresh lease of life to the Legislatures until the election of the new House is complete and is "summoned to meet for the first session" under the provision of the new Constitution. Having thus ensured the position of the present Ministries and Legislative Assemblies, the Government need not be in a hurry to finalise either the work of constitution-making or holding elections under it. Even a section of their own party men appears to have found it difficult to appreciate Dr. Ambedkar's policy. Mr. K. Santhanam, Transport Minister, was frankly critical of the transitional provisions when he stated: "It will be nothing but a national disaster if these Assemblies perpetuate themselves. It is a possibility that members who are apprehensive of being returned on the basis of adult franchise elections, would like to perpetuate themselves ... Some measures must be adopted for fixing the time limit for Provisional Assemblies so that the people of India will know that the new Assemblies on the basis of adult franchise will come into existence on such and such date. If the functioning of the new Constitution is unduly delayed it may become out of date." Mr. B. Das was equally critical about Government's motive. "The traditions of the Government of India and the Provincial Ministers do not show that they are in a hurry to do everything for Democracy", he said.

These criticisms of the Government's policy, coming from members of their own Party, evidently proved highly embarrassing for the Treasury Bench. The President, Dr. Rajendra Prasad, promptly came to the rescue of the Government and declared: "The information from the provinces leads us to hope that elections may take place any time between November 1950 and February or March 1951. *But unforeseen difficulties may arise*". What exactly may be the nature of "unforeseen difficulties," Dr. Rajendra Prasad did not disclose. Even assuming that a World War may start in the meantime, will that be a sufficient excuse for perpetuating Ministries who have lost the confidence of the people?

The Congress administration during the last two years has brought the country to the verge of economic disaster. Trade and commerce of India have been practically ruined. The devaluation of rupee has proved the last straw on the camel's back. People are being forced to go without their meals. The growing deterioration in the economic condition of the masses, the imposition of ban on civil liberties of the people, abnormal growth of corruption and nepotism in the universities and civil administration, have made the people anxious for a change in the Government. They want a radical change too.

Pandit Jawaharlal Nehru had the frankness to admit the other day that "*the State in India functioned as something apart from the public*". Dr. Shyama Prasad Mukherjee also admitted that the gulf between the people and the Government was being steadily widened. Mr. Santhanam only uttered a truism when he emphasised that if the functioning of the new Constitution is unduly delayed and the present Assemblies are perpetuated it would be nothing short of a national disaster. Dr. Rajendra Prasad's statement that "unforeseen difficulties may arise" in the way of the functioning of the new Constitution seems to be ominous. It lends corroboration to Mr. B. Das' statement that the "Congress Cabinets never kept to schedules".

The Constitution drawn by men who not only do not represent more than 13 per cent of the people but also have ceased to enjoy their confidence even cannot meet the real requirements of Democracy. The Constitution will have to be recast by men with mandate from the people. The foundation of Democracy in India must be well and truly laid. Any undue delay in holding the general elections under adult franchise is bound to prove a national disaster. The Assemblies must be prevented from perpetuating themselves.

Hindu Express 7-10-49

NO TIME-LIMIT FOR ELECTIONS

NEW DELHI, Oct. 6.

The Congress Party in the Constituent Assembly, it is understood, today decided against inclusion in the Constitution of a provision for fixing a time-limit by which the general elections should be held.

It is understood, Mr. K. Santanam suggested the incorporation of such a provision in the chapter dealing with transitory provisions. The consensus of opinion amongst the members of the party, however, was that the Government's hands should not be tied down by including such a provision in the Constitution. They were, however, in favour of the Constituent Assembly adopting a resolution urging on the Government to fix an early date for the general election. It was felt that such a resolution, operating as a directive, would serve the purpose.

The party also adopted other transitory provisions relating to the existing legislatures, Governors and Ministers of provinces, and at the Centre.—P.T.I.

Hindu · 8-10-49

GENERAL ELECTIONS IN 1950-51

DR. RAJENDRA PRASAD'S HOPE

NEW DELHI, Oct 7.

The President, Dr. Rajendra Prasad, announced in the Constituent Assembly to-day that the information which had come to the Constituent Assembly Secretariat from the provinces "leads me to hope that the elections will be held sometime in the winter of 1950-51, that is, in between November 1950, and February or March 1951". He added: "Of course, unforeseen difficulties may arise and we do not know what we will do at that stage".

Dr. Prasad said they had decided to have adult franchise and hoped the House realised what a "tremendous task" it meant. "With our present population and with the information at our disposal based on the enrolment of voters it seems that our electoral roll will comprise anything between 179 and 180 million names. The mere fact of printing this is such a tremendous job that the Government have been put to difficulties to find a press which will undertake this job", he added.

"We are trying our best. If there is delay, the delay will not be intentional on the part of either the Provincial or Central Government but because of the bigness of the job itself". Dr. Prasad said.—UPI.

Indian News Chronicle

MONDAY, OCTOBER 10, 1949

UNDEMOCRATIC

It does not appear that the grave implications of the proposal to continue the present Constituent Assembly as the country's Parliament are fully understood. According to a new Article which is proposed to be incorporated in the Constitution, the Constituent Assembly is to function as the Provisional Parliament "until both Houses of Parliament have been duly constituted and summoned under the new Constitution". No date, however, has been fixed for the Constitution and summoning of these two Houses under the new Constitution. The President of the Assembly, Dr. Rajendra Prasad, expressed the "hope" that the general elections would be held some time between November 1950 and February or March 1951, but whatever may be the basis for this "hope" he was careful enough to qualify it by adding: "Of course, unforeseen difficulties may arise and we do not know what we will do at that stage". When one recalls that according to original expectations, the present Constituent Assembly itself was to have completed its task of constitution-making in six or seven months—though nearly two years have already passed—one can see that these hopes cannot serve as any reliable guide in these matters. What, however, is obvious is that the Constituent Assembly is deliberately under this Article extending its life for an indefinite period and nominating itself as the country's Parliament without any reference to the electorate. Nothing can be more undemocratic than any arbitrary decision of this kind for which one finds no parallel anywhere in the world. When Mr. Santhanam expressed himself frankly apprehensive about these transitional provisions and warned the Assembly that "it will be nothing but a national disaster if these assemblies perpetuate themselves", he spoke the bitter truth. As is well known the present Constituent Assembly was hastily improvised under totally different political conditions, on the basis of the Cabinet Mission's plan for the definite purpose of framing the new Constitution. It committed its first wrong when it later assumed double functions and constituted itself the country's Parliament. If the excuse then was that as the Constitution was due to be completed in a few months and the general elections would immediately follow, there was no need to re-elect a new Parliament for so short a period, events have shown how totally wrong were these expectations. In any case, there is no room for any such excuse today. If the Constituent Assembly, even after it has completed its task of constitution-making, proposes to sit for the next two or three years and constitute itself the provisional Parliament for this long period it would not only be a clear abuse of its position and powers but an affront to the people. It would rob the electorate of its undoubted right to choose its own representatives. As not only the conditions in the country but also the problems before the people have vastly changed since this Assembly was constituted—by a hurried process of nomination and indirect election—it is only fair and just that this body should be dissolved and there should be a fresh election on as wide a basis as possible to secure a truly representative Parliament. We see no practical difficulty in holding a general election—at least on the basis of the old restricted franchise—and setting up a new and properly elected Parliament for the interim period—which will undoubtedly be a critical period for the country with many difficult problems to solve. Even under the proposed Article prohibiting dual membership it will be necessary to hold over a hundred bye-elections in order to fill the seats of those members of Provincial and State Legislatures who will have to resign their membership of the Constituent Assembly. In the circumstances it cannot be difficult to dissolve the whole Assembly and secure a fresh election for all the seats. In fact, the most democratic course will be to hold new elections for all Provincial Legislatures also, as has already been ordered in the case of West Bengal, and give an opportunity to the electorate everywhere to re-elect its representatives in the proper democratic way.

The Hindustan Times
MONDAY, OCTOBER 10, 1949

TRANSITION PROBLEMS

When the transitional provisions of the new constitution were debated by the Constituent Assembly on Friday, there was an interesting but unexpected debate over the duration of the legislatures, both provincial and Central, during this period. The scheme incorporated in Part XVII of the constitution provides for the continued functioning of the machinery of the Government, the Legislature, the Executive and the Judiciary and bodies like the Public Service Commission and officials like the Auditor-General during the period of transition. The present Constituent Assembly is to function as the Dominion Parliament until the new Parliament on the basis of the enlarged franchise is elected. The Provisional President is to be elected by the Constituent Assembly and he will hold office till the new President is duly elected under the provisions of the constitution. The existing Council of Ministers is to continue till another is appointed by the President. In the States, now known as provinces the legislatures functioning at the time of the introduction of the constitution will continue to function till the new legislatures are elected under adult franchise. The Governors holding office at the time are to continue and the Council of Ministers is also to continue until such time as the Governor appoints a new Council.

In the ordinary course, there is no reason why these provisions, which are intended to make the transition from the present to the future smooth, should have given rise to any heated debate. But when Mr Santhanam expressed the apprehension that those unwilling to face the enlarged electorate might seek to perpetuate themselves in the absence of specific provisions limiting the period of provincial legislatures, the debate took an interesting turn. Such things have happened before. The old Central Legislative Assembly, functioning under the Act of 1919 because the Federal part of the Act of 1935 had been held in abeyance, had its term extended, first on the pretext of the likelihood of the introduction of Federation and then on the excuse of war, about three to four times its normal life. What happened before might well happen again. But there is this difference, that then the Government was an irresponsible one while today we have a Government which depends for its existence on the support of public opinion. The practical difficulty in the way of fixing a rigid time-limit was mentioned by the President, Babu Rajendra Prasad, who pointed out that the preparation of electoral rolls under adult franchise would mean registration of some 170 to 180 million names. The Constituent Assembly itself had asked the Government, in its January resolution, to go ahead with the preparation of electoral rolls and hold the elections as early as possible. The President's information was that it would be possible to hold the new elections some time in the winter of 1950-51. But the possibility of unexpected and entirely unforeseen difficulties arising should not be ruled out. The provisional Governments in the Centre and the provinces will not be able to resist the pressure of public opinion for dissolution of the legislatures and the holding of general elections, once all the arrangements for the purpose have been completed. The successful working of any constitution must depend, in the last resort, on the state of political education and the social conscience of the people. Vigilance cannot be relaxed.

In the excitement caused by the debate, another and, perhaps, a more important Article was passed practically without a debate. Under Article 313(1) the President has been authorized to adopt the provisions of the new constitution, whether by modification, addition or omission, for the purpose of removing any difficulty, particularly in relation to the transition from the provisions of the Government of India Act 1935 to the provisions of the new constitution. These wide powers almost seem to nullify the work of the Constituent Assembly, at least so far as the transition period is concerned. It will, however, be remembered that the Independence Act of 1947 vested the Governor-General with similar powers regarding adaptations of the Act of 1935. But there are two limitations to the exercise of the powers given to the President under this Act. First, these powers are to last only till the new Dominion Parliament elected under adult franchise meets. Secondly, all orders of the Governor-General under this Article are to be laid before the Dominion Parliament. There must be somebody to smoothen the difficulties of transition and the President, especially as he will be a constitutional President, is the fittest person to discharge this responsibility.

The Nation

MONDAY, OCTOBER 10, 1949

THE STEEL FRAME

A PRESS AGENCY REPORT from New Delhi, states that the Congress Party in the Constituent Assembly has decided to make provisions in the Constitution for granting "protection" to those I.C.S. and I.P.S. personnel who have been appointed by the Secretary of State for India and will continue in the services after the commencement of the new Constitution of India. "Protection" has been defined to mean that the I.C.S. and I.P.S personnel will enjoy such privileges, remuneration, leave and pensions as they were entitled to during British regime. While even the emolument of Judges of High Courts is proposed to be brought under the pruning knife of economy, salaries, pensions, privileges and leave rules of the personnel of "steel frame" services are evidently regarded as too sacrosanct to be interfered with in any way.

When the Lee Commission's report recommending extravagant salaries, allowances and pensions for members of the I. C. S. and I. P. S, was given effect to by the British Government the Congress was the first to raise its voice of protest against the "Lee loot". Resolutions were then passed strongly condemning the British Government's "generosity" at the cost of "starving" Indian tax payers. When Mr. Lloyed George described the I.C.S. and I.P.S. as the "steel frame" of India, Pandit Nehru was most loud and vehement in his criticism of the then British Prime Minister's statement.

But now the position has changed and the Congress is at the helm of administration. The members of the I. C. S. and the I. P. S. personnel are their friend, philosopher and guide. So, Congress conveniently forgot its past stand and surrendered its conscience, if it has any, to the lure of office. People have by this time seen many feats of somersault by Pandit Nehru and his friends in the Congress. So, this may not appear surprising to them. "Freedom" by "compromise" which India is said to have secured appears to have brought about a radical change in the angle of vision of our ruling leaders. They have discovered new virtues in the "steel frame" services. Their association with Britain as a member of the Commonwealth of Nations appears to have imbued them with British mentality enabling them to view things in new perspectives. Their faith in British institutions and British traditions is growing as days pass on. They dare not administer the affairs of "free" India without the guidance of the the "steel frame" services.

How far this faith in the I.C.S and I.P.S. happens to be the outcome of love for British institutions or how far it is due to intrinsic merit of the members of the "heaven-born" services we do not know. But the Congress Party or a caretaker government had no business to make the terms of services of the members of I. C. S. and I. P. S. a part of the Constitution. The present Constituent Assembly, which is framing the new Constitution, is neither representative nor has any popular sanction behind it. By making "protection" to the heaven-born services a part of the Constitution, it creates new difficulties for those who will be returned to the new Legislature on adult franchise to execute peoples' mandate. They will like to have radical changes but their hands will be fettered by decisions like these.

If the "steel frame" men are not ready to share in the sacrifices which Pandit Nehru wants the common man to make, they have no moral right to "serve" the people. Members of the Indian Civil Service were neither "civil" nor "servant" of the people in British regime. There is nothing to show that the inherent character of the "steel frame" services has undergone any change under present environments. Still our Congress rulers are anxious to "protect" the princely emolument and privileges of the most pampered services of the world. People know where lies the snag.

INDIAN REPUBLIC

WEDNESDAY, OCT. 12, 1949.

GUARANTEES TO SERVICES

The debate in the Constituent Assembly on Article 283 (A) which proposes to guarantee to the members of the Civil Service under the new Constitution the rights and privileges they enjoyed at its commencement, followed familiar lines. The Civil Service in India had never been a favourite with the Indian Legislature, in which questions pertaining to the emoluments and rights of the I.C.S. had always been prone to provoke bitter and sarcastic comment. The debate in the Assembly was, therefore, no surprise. Nevertheless the problem has to be regarded from two different viewpoints. In the first place, there is the question of the continuance of the salaries and emoluments of the services, which they were receiving in pre-freedom days. In the second place, there is the more general question of affording guarantees of security of service and freedom from outside interference to the civil servants. There can be, and there is, legitimate objection to the continuance of the high salaries of the members of the I.C.S. which, as is well known, are patently out of proportion to the economic conditions of the common people. It is widely agreed that these emoluments should bear some kind of relation to the standards of living of the masses, and it was the conspicuous absence of any such relation during the British regime that rendered the all-India services liable to opprobrious upbraiding at the hands of legislatures and the public. To perpetuate those conditions even under the changed regime naturally gives rise to the criticism that, of all sections of the public, it is the members of the Civil Service who are being petted and pampered by the national Government.

On the other hand, there is an imperative need to guarantee to the services security of tenure freedom from political interference, and protection against capricious treatment by party Governments. No country can get an efficient and honest civil service which is not prepared to provide the requisite safeguards to the members thereof against insecurity and cavalier treatment. If it is true that any country gets only the government it deserves, it is equally true that it gets also the civil service it deserves. And it will be a very inefficient civil service indeed that it can get under conditions of un-guaranteed security, while it will be a very poorly administered country which has such an inefficient, ill-equipped and ill-paid civil service, whose members are prone in consequence to play to the tune of party bosses and politicians and who cannot express their views candidly and honestly in the interests of the public they serve. Under a democratic regime, it is all the more essential to avoid conditions which render the civil service an inefficient instrument for public good, for in a democracy good administration is as important as progressive policies.

The two aspects referred to above with regard to the safeguards and guarantees to be provided for the I.C.S. and other services in India must be considered entirely separately. This much is a fact that the country cannot afford to shoulder the burden of an over-paid and top-heavy civil service now, though it had had to do it out of necessity when it had no control over its own affairs. The Central Pay Commission has formulated a scheme of scales of pay and emoluments for various services and posts under the Central Government which are more in consonance with the requirements of the situation and which can be applied even to provincial services. Those scales of salaries should be enforced in the case of all grades of officers and posts and the transition from the old to the new order must be as expeditious as it possibly can be.

We associate ourselves with the tribute paid to the efficiency and loyalty of the public services in India, after the attainment of freedom, by Sardar Patel and other Ministers at the Centre and in the provinces. We agree that most of the members of the services are rapidly attuning themselves to the changed conditions though a few of them may find it difficult or may be reluctant to do so. Their patriotism or their efficiency we have, therefore, no intention to doubt or question. So while there will be no objection to the continuance of the guarantees regarding security of service and freedom from interference, it will be appreciated if the services reveal their patriotic impulse by making such voluntary reductions in their salaries and allowances as the economic situation in India calls for. A suggestion of this sort has been adumbrated by Sardar Patel himself. We do not expect a large response to the suggestion, but even if some of them would agree to a curtailment of their salaries as a gesture, they will be enhancing and adding to their fund of goodwill with the public.

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Indian Express

MADRAS: WED., OCT. 12, 1949

ALL-INDIA SERVICES

WHAT WAS PREVIOUSLY known as the Secretary of State's Services would enjoy "the same conditions of service in respect of remuneration, leave and pension as they were entitled to immediately before August 15, 1947." A guarantee to this effect has been incorporated in the Indian Constitution, and it applies to all persons recruited to the Services before the Appointed Day. That the guarantee has not been given wholeheartedly either by the Congress Party or the Constituent Assembly is quite evident from the debates reported, and anyone who views the question impartially must concede that the opposition was not born entirely out of prejudice. While one will agree with most of what Sardar Patel said about the patriotism and ability with which members of the Civil Service have acquitted themselves in the past two years, and their indispensability for the time-being one must also agree with Mr. Ananthasayanam Aiyangar about the flagrantly disproportionate salaries paid to them in relation to India's national income. Their pay is higher than is given to civil servants elsewhere though the national income of India is among the lowest. In view of the fact that the bloated salaries were paid by a foreign government for reasons of their own, the proper course for the Civil Servants in the changed conditions was to accept the maximum prescribed by the Central Pay Commission, but since this hope has not materialised the present Government of India have had to reconcile themselves to the old scales and conditions guaranteed by the leaders at the time of the transfer of power. The main justification for retention of the old scale and conditions of service therefore is the sanctity attaching to the plighted word; that was enough reason for the Assembly to accept the new Article 283 (A).

Sardar Patel was rightly critical about the reflections cast on the Services' personnel. After all he is most qualified to pronounce an opinion and the nation must accept his verdict that, by and large, members of the Secretary of State's Services have been loyal to the country and the Government and served them honestly and efficiently during the most difficult period of transition. The change-over from slavery to freedom was so sudden in India that a new machinery could not be improvised all at once and the new Government have had to make use of the original machinery. It is to the credit of the Services that they ignored the change in Government and rendered service as of old. A high standard of administration has been maintained and in order that obligations of the present Government may be respected by the successor Governments as well, service conditions are constitutionally safeguarded. On their part the Services must, at the same time, remember that the preferential treatment accorded to them is unfair. One must share the views expressed in the House, and hope that they will respond to the gesture by voluntarily submitting to certain restrictions.

Curiously enough the latest issue of the *Harijan* contains a letter from a member of the less privileged Services which has relevance to the subject under discussion. While agreeing with the Editor's view, expressed in an earlier issue of the paper, that the Services must turn over a new leaf in view of the transformation that has taken place in India, the writer is critical about the Congress Government being still led by the Services, retaining at the top persons some of whom at least were discredited in the past and still render teamwork wellnigh impossible. He pleads for new blood, and bemoans the opportunity lost for preventing at least the new recruits from being fully taken up with "rank, precedence, foreign travel and other exclusive privileges." He further pleads for more intimate contact through departmental meetings and the like and suggests that too many gradations which kill initiative should be avoided. The demoralisation noticed among non-I.C.S. men either doing the same work as I.C.S. men or placed in senior posts, consequent on the dissimilarity of salaries paid, is yet another grievance mentioned. "Interference from outside" and "intrigues at high level" also find mention. Some firm programme of Service reform is indicated if really the employees of the Government are to be given a lead and inspired in the tasks ahead. That the Government machine should be maintained at high efficiency is conceded; it should also be made sufficiently attractive for first class, talent. But the sharp differences in salary and status should be minimised. Otherwise, there is bound to be a gap between formulation of policies and their implementation. A radical reorganisation of the present set up is called for, if the crazy quilt of duplications, overlappings, inefficiencies and inconsistencies with the attendant extravagance is not to be perpetuated. All services, activities and functions not necessary for the efficient conduct of Government must be ruthlessly abolished. The need for economy and retrenchment is urgent; to avoid it for fear of causing unemployment will be like pitying the plumage while forgetting the dying bird.

THE FREE PRESS JOURNAL

BOMBAY, WEDNESDAY, OCTOBER 12, 1949

FINISHING TOUCHES

The Constituent Assembly is almost at the end of its laborious task.

When work on the new constitution was started, it was expected to be over in a very few months.

But the work dragged on until months passed into years.

This is not to be regretted.

The picture of India today is far different from that of India at the end of 1946.

At that time few, if any, even among the topmost leaders could imagine the magnitude of the problems which independence would bring.

No one could then expect that the problems of the Princes in general, and of Hyderabad in particular, would be solved as easily as they have been.

Communalism was then the chief stumbling block to national progress.

Partition, though demanded, was still supposed to be only of academic interest.

If the Constituent Assembly had done its work with the expected speed, there is no doubt that its work would have been so lopsided and so unsuitable to conditions as they have developed that by now we should have been busy amending it.

Indian politics, economics, society, are still undergoing quick changes.

The next few years may bring about as great a revolution as the past two years have done.

The new constitution is likely, in these conditions, to grow more and more out of date.

It will want many amendments.

But as it stands—in spite of many obvious imperfections—it provides a fairly workable arrangement.

To a great extent it reflects conditions in the country at present.

This very fact, indeed, may be considered to be one of its defects.

The Congress now occupies a position of overwhelming importance in the country.

For all practical purposes there is one-party Government at the centre.

In the Provinces, one-party Government is acknowledged in theory and practice.

This condition is plainly reflected in the new constitution.

The Congress Party may not be able to maintain its predominance for all time.

When some other party grows sufficiently in strength and offers serious opposition to Government, it may feel the constitution as it stands now to be entirely insufficient.

As regards its suitability for the present probably the most telling tribute is the opinion of Mr. Jayaprakash Narayan that, in spite of its defects, it could be accepted as a workable democratic machine.

The Assembly is now busy giving the finishing touches to its handiwork.

Loose ends are being tied up and neglected details considered.

Among these, one item, an article guaranteeing conditions of service to members of the Indian Civil Service, provoked an unnecessarily heated debate.

Many of the members do not seem to have grasped the fact that the guarantee is only to the old servicemen who have been appointed by the Secretary of State.

This group will, in any case, cease to exist in a few years.

The question is quite unconnected with that of Secretariat reform or the conditions under which Government servants are recruited now.

The country will not mind these few people enjoying privileges which they had been promised when they entered service.

But they should apply their undoubted talents, talents recognised so generously by the Deputy Prime Minister, to ridding the administrative machinery of the evils and abuses which have gathered round it in the past two years.

The Hindustan Times

WEDNESDAY OCTOBER 12, 1949.

GUARANTEE TO THE SERVICES

To many both within the Constituent Assembly and outside, Sardar Patel's speech supporting the Article in the constitution guaranteeing to the members of the former civil services appointed by the Secretary of State for India the same conditions of service as respects remuneration, leave, pension, etc., and the same or similar rights as regards disciplinary matters, as were enjoyed by them at the commencement of the constitution, must have come in the nature of a surprise. But it is easy to see the justification for the Sardar's attitude. At the time of the transfer of power, our leaders had agreed to the continuation of these privileges, may be under the stress of circumstances. Having once given their word, it is not for them to go back on it, even though they can repudiate their pledged word, if they want to do so. The nation cannot afford to do anything which may be interpreted as a deviation from the path of honourable dealing. If the abandonment of these special privileges had come as an act of voluntary surrender from the members of these services, it would have been a noble gesture which would have demonstrated their patriotism at a time when the country was passing through acute economic stress. Since they did not do so, there was no alternative for the Government but to implement their promises in such a way as to avoid any suspicions of a desire anywhere to go back on them. The existence of a privileged class in the services is likely to cause heart-burning, but the discrimination by its very nature is not everlasting. The view will also be held that the guarantee could have been made effective without the need for embodying it in the constitution.

Because of the wholesale withdrawal of the British element and the partitioning of the country on the one hand and the assumption of increased responsibility on account of the integration of the States on the other, the country today is suffering from a dearth of trained administrative personnel which is being felt acutely. Whatever the shortcomings of the civil services under the old dispensation might have been, our leaders found, ever since they assumed the responsibility for the government of the country, that they could depend on these men to carry out their decisions loyally and efficiently. Having worked with them, they are in a much better position to give a verdict on their ability as well as loyalty than critics ventilating past prejudices. If, under these circumstances, the Government feel that they must keep the few able officers under them contented, it is quite natural. The country is likely to get the best out of them more by following a policy of generosity than one of petty cheese-paring. Nor are the financial implications of the privileges conceded such as to cause alarm in a budget of more than Rs 300 crores. Even for the success of democracy, especially a young democracy such as ours, it is necessary to have an efficient and contented civil service.

It cannot be denied that some recent developments have given cause for alarm among members of our civil services. This feeling is shared by others who are anxious that democracy in this country should progress on healthy lines. Where democratic constitutions have been functioning successfully, a clear distinction is observed between the functions of Ministers and those of the civil servants. Under these Ministers confine themselves to matters of policy, while officials remain free to carry on the administration according to established rules, regulations and traditions, keeping in view the broad lines of policy laid down by the Government. In his recent book *Prejudice And Judgment*, Sir James Grigg, who as Finance Member of the old Government of India made himself obnoxious to the largest number of people in this country, referring to Philip Snowden says: "....he was the ideal of what a minister should be in that he gave a clear lead on all questions of policy, interfered rarely, if at all, in matters of administration, gave decisions quickly and unequivocally, and then defended his decisions against all comers with confidence and vigour —and nearly always with success." These are the traditions which we in this country must develop. Our politicians also must remember that even for the shortcomings of civil servants the responsibility is that of the Minister concerned and it is he who should become the target of attack, for the services are not represented in Parliament and cannot defend themselves when attacked. There are difficult days ahead of the country and if we are to come through safely, the services, the Government and the politicians all must pull together, forgetting old quarrels and prejudices.

THE LEADER

THURSDAY, OCTOBER 13, 1949.

The American economist, Veblen, has called the privileged classes the 'kept classes'. I think it would be equally true to call the I. C. S., as well as the other imperial services, the 'kept services'. They are a very expensive luxury.—PT. JAWAHARLAL NEHRU.

SAFEGUARDS FOR HEAVEN-BORN

THE debate on article 283 A of the constitution which provides for the protection of the interests of the Indian Civil Service did much to enliven the otherwise dull atmosphere of the Constituent Assembly on Monday. Mr. Ananthasayanam Ayyengar said, 'This particular heaven-born service 'will continue to be a heaven 'born service for some time to 'come.' Mr. Ayyengar thoroughly disliked the 'extraordinary 'guarantee' by virtue of which 'these men who were rulers in 'the previous regime would con'tinue to be rulers in the present 'regime'. In fact, they were 'now becoming super-sovereign' Mr. Ayyengar expressed surprise that members of the house should be asked to 'forget 'the excesses committed by some 'of the civil servants'. Mr. Ayyengar is a senior member of the Constituent Assembly. That in speaking on the I. C. S. even he should use the language of a back-bencher is not surprising. No service in the world has been so unpopular as the I. C. S. was in this country.

This unpopularity was well deserved. British spokesmen used to say that the mission of the Indian Civil Service was to secure the well-being of the millions. This is cant. The Britons came to India to fill their pockets. Remember the Lee loot. Far from promoting the well-being of the people of India, I. C. S. men did India great harm. The government of the people by the people is essential to the well-being of the millions. The I. C. S. made every possible effort to exclude Indians from power and responsibility. To take an instance, soon after the introduction of the Montagu-Chelmsford reform scheme, Mr. Srinivas Sastri raised in the legislature the question of the Indianisation of the secretariat, which was the citadel of the bureaucracy, so to say. There was no response from the bureaucracy. The secretariat continued to be dominated by Europeans' until August 1947. The I. C. S. believed not in right but in might. When it found that Indian nationalism was growing powerful, it used force to crush it. It is true that the British members of the I. C. S. have left India and that it is the Indian members of the I. C. S. who will benefit by the provisions of article 283 A. But it has to be said with regret that under the British regime the attitude towards Indian nationalism of the Indian members of the I. C. S. was not very different from that of the British members of the service. Pt. Nehru recorded the opinion 13 years ago that 'some Indian members of the 'service . . . . have become plus *'royaliste que le roi.'* At that time Pt. Nehru rejected any suggestion for provisions in the constitution to safeguard the interests of the services. He wrote, 'There is a great deal of 'talk of safeguards in these days 'of constitution-making. If these 'safeguards are to be in the in'terests of India, they should lay 'down, among other things, that 'the I. C. S. and similar services 'should cease to exist in their 'present form and with the pow'ers and privileges they possess, 'and should have nothing to do 'with the new constitution.' That of all persons Pt. Nehru himself should concede the demands of the I. C. S. for safeguards and make provision for the safeguards in the new constitution is undoubtedly a remarkable event. It marks the triumph of the I. C. S. over the Congress.

But while we may not be enamoured of the I. C. S. and the safeguards, we must remember the circumstances in which Pt. Nehru has agreed to give this 'extraordinary guarantee' to the service. The British consented to quit India on certain conditions. One of the conditions was a provision in the constitution for the preservation of the existing rights and privileges possessed by the I. C. S. Thus the Congress had to choose between two evils: the maintenance of British rule and the retention of the rights and privileges of the I. C. S. The Congress chose the lesser of the two evils. Accordingly as Sardar Patel said in his speech in the Constituent Assembly, 'The guarantee to the service found a 'place in the Indian Indepen'dence Act (1917) which gave 'birth to the Indian Parliament.' We cannot go back on our promise. Also it must be said in fairness to the I. C. S. that its outlook has changed since the departure of the British from India. The Indian members of the I. C. S. who during the British regime were 'more British 'than the British themselves' (Pt. Nehru's opinion) are today as patriotic and as loyal to India as Congress Ministers themselves. Sardar Patel said, 'Dur'ing the last two or three years 'if members of the service had 'not behaved patriotically and 'loyally, the Union would have 'collapsed. They have worked 'day and night'. In these circumstances, discretion lies in condoning the past infidelity of the I. C. S. and conceding the service the safeguards it demands even though the national leaders may have to eat their own words.